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SUPREME COURT, U. S.

In The

Supreme Court of the United States

October Term, 1969

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,
Defendants

MOTION FOR LEAVE TO FILE COMPLAINT AND COMPLAINT

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Defendants

MOTION FOR LEAVE TO FILE COMPLAINT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Commonwealth of Pennsylvania, by its Attorney General, William C. Sennett, respectfully asks leave of the Court to file against the State of New York, the State of Florida, the State of Oregon, the Commonwealth of Virginia, and The Western Union

Telegraph Company, a New York corporation, the Complaint which is submitted herewith.

WILLIAM C. SENNETT
Attorney General of Pennsylvania
JOSEPH H. RESNICK
Assistant Attorney General
Attorneys for Plaintiff, Commonwealth of Pennsylvania

MICHAEL EDELMAN
Of Counsel

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STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,
Defendants

COMPLAINT

The Commonwealth of Pennsylvania, plaintiff, by William C. Sennett, its Attorney General, brings this original action against the State of New York, the State of Florida, the State of Oregon, the Commonwealth of Virginia, and The Western Union Telegraph Company, defendants, and alleges as follows:

I.

1. The plaintiff, the Commonwealth of Pennsylvania, and the defendants, the State of New York, the State of Florida, the State of Oregon, and the

II.

7. In addition to its telegraphic message service, Western Union carries on a telegraphic money order service, receiving money from a purchaser of a telegraphic money order at one place for payment of the amount so received to a named person at another place. Telegraphic money orders are hereinafter referred to as "money orders" or "money order".

8. The company uses the term "sender" to designate the purchaser of a money order.

The term "sendee" is used hereinafter to designate the person to whom the money order directs the money to be paid.

The term "State of origin" or the term "place of origin" is used hereinafter to designate the State or place where the money order is purchased from Western Union and where is received from the sender the amount to be paid to the sendee.

The term "State of destination" or the term "place of destination" is used hereinafter to designate the State or place in which the money order directs the money to be paid to the sendee.

9. The procedure observed by Western Union in its telegraphic money order service is as follows:

a. The sender fills out a money order form at a Western Union sending office in the State or place of origin and gives it to the company's clerk, together with the money to be sent and the company's charges for sending it. A copy of a typical money order form is hereto attached, marked "Exhibit A".

All of the terms and conditions set forth in the money order are part of Western Union's tariffs on file with I.C.C., and also when required by the laws of any State, are part of Western Union's tariffs on file with the regulatory body of such State.

The form has blank spaces to be filled in by the sender, showing the amount to be sent, the name and address of the sendee, and the sender's name and address. In most cases the sender fills in the blanks, but in many cases he fails to fill in the space for his address. The clerk fills in the blanks showing the address of the office of origin, the date and hour the money order is purchased, and the company's charges.

The money order states that it is subject to the conditions printed on the face and back thereof. One of the conditions on the back is the following:

"Domestic money orders will be cancelled and refund made to the sender if payment cannot be effected within 72 hours after receipt at paying office . . ."

As to other money orders, the period fixed in the money order is 5 days or 10 days.

b. A receipt is given to the sender, a typical form of which is hereto attached, marked "Exhibit B".

c. The company's clerk at the office of origin then sends a telegraphic inter-office message to its paying office nearest the sendee's address

Commonwealth of Virginia are States of the United States.

2. The defendant, The Western Union Telegraph Company, hereinafter referred to as "Western Union", is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 60 Hudson Street, New York, New York.

3. This is a civil controversy (a) between two or more States of the United States, and (b) between Western Union and States other than its State of incorporation, and is, therefore, within the original jurisdiction of the Supreme Court of the United States, under Article III, Section 2 of the Constitution of the United States, and of the United States Code, Title 28, Section 1251 (a) (1) and (b) (3).

4. Western Union is joined as a party defendant because the subject-matter in controversy consists of moneys received by the company for telegraphic money orders, and the judgment prayed for will necessarily include an order directing the company to pay the amounts so received, or a portion or portions thereof, to one or more of the States named herein as parties, or to a State or States not named as parties, but which may, with the permission of the Court, intervene as a party or parties.

5. New York, Florida, Oregon and Virginia are the only States named as defendants herein, because they are the only States which, according to plaintiff's knowledge, are asserting rights which may be contrary to the claims of Pennsylvania. However, there

are potential claims of other States, not only with regard to the specific portion of moneys claimed by Pennsylvania out of amounts received by Western Union for money orders, but also with regard to any other portion thereof not claimed by Pennsylvania.

The plaintiff will, therefore, not only make service on the defendants, but will, upon the filing of this Complaint, also mail a copy of the Motion for Leave To File Complaint and Brief in Support of Motion and of this Complaint, to each of the States not named herein as defendant, in order that any other State desiring to assert a claim to any moneys received by Western Union for money orders may seek leave of this Court to intervene in these proceedings.

6. Western Union is, and was during the period here involved, authorized to do business in most of the States of the United States and in the District of Columbia, and, prior to divestment of its international operations on September 20, 1963, it was also authorized to do business in certain foreign countries.

On or about October 7, 1943, Western Union merged with Postal-Telegraph, Inc. and operating and sales subsidiary companies, and, in so merging, Western Union assumed the obligations of Postal-Telegraph, Inc. and subsidiary companies. To the extent telegraphic money orders of the predecessor companies resulted in obligations which were assumed by Western Union and are involved in this action, such telegraphic money orders are herein treated as if they were originally Western Union telegraphic money orders.

II.

7. In addition to its telegraphic message service, Western Union carries on a telegraphic money order service, receiving money from a purchaser of a telegraphic money order at one place for payment of the amount so received to a named person at another place. Telegraphic money orders are hereinafter referred to as "money orders" or "money order".

8. The company uses the term "sender" to designate the purchaser of a money order.

The term "sendee" is used hereinafter to designate the person to whom the money order directs the money to be paid.

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All of the terms and conditions set forth in the money order are part of Western Union's tariffs on file with I.C.C., and also when required by the laws of any State, are part of Western Union's tariffs on file with the regulatory body of such State.

The form has blank spaces to be filled in by the sender, showing the amount to be sent, the name and address of the sendee, and the sender's name and address. In most cases the sender fills in the blanks, but in many cases he fails to fill in the space for his address. The clerk fills in the blanks showing the address of the office of origin, the date and hour the money order is purchased, and the company's charges.

The money order states that it is subject to the conditions printed on the face and back thereof. One of the conditions on the back is the following:

"Domestic money orders will be cancelled and refund made to the sender if payment cannot be effected within 72 hours after receipt at paying office . . ."

As to other money orders, the period fixed in the money order is 5 days or 10 days.

b. A receipt is given to the sender, a typical form of which is hereto attached, marked "Exhibit B".

c. The company's clerk at the office of origin then sends a telegraphic inter-office message to its paying office nearest the sendee's address

shown in the money order, directing the paying office to pay the money to the sendee.

The money received at the sending office for the money order is not sent to the paying office, but remains at the sending office and is intermingled with moneys collected there for telegrams and other receipts. The intermingled moneys are used for the purpose of paying any incoming money orders and other authorized expenditures of the sending office. Accumulation of surplus cash, if any, is deposited in a local bank account in the name of Western Union. Accumulation of excess funds, if any, in the local bank account is remitted to a Divisional Headquarters Cashier, who, in turn, remits to the company Treasurer.

d. In most cases, the sendee is notified by the paying office that a telegraphic money order has been received for the payment of money to him, and to call at the paying office, the address of which is given, to receive the money. A typical form of such notice is hereto attached, marked "Exhibit C".

In some cases, where the sendee is otherwise aware of the money order, notice may not be sent to him. In some cases the company attempts to give such notice, but is unsuccessful in the attempt.

e. Upon identifying himself at the paying office, the sendee is given a negotiable company draft, which he may endorse and cash immediately at the company's office, or keep for future

use. A typical form of draft is hereto attached marked "Exhibit D".

In some instances, the sendee does not call for the draft, but, by request of the sender or sendee, it is sent to the sendee.

f. If the sendee cannot be located, or if, after notice, he fails to call for the draft, or if, for any other reason, the company is unable to issue a draft to the sendee, then, after 72 hours (or other period specified by the conditions of the money order), the money order is cancelled by the paying office notifying the sending office that payment has not been effected, and, under the conditions printed on the money order, refund to the sender is required. Once the money order is canceled because of the expiration of the specified period, the company will not later issue a draft to the sendee or otherwise recognize any right in the sendee under the money order.

g. The sending office then notifies the sender that payment to the sendee could not be effected, and that the company will make refund to the sender.

h. The sender may present himself at the sending office and receive a negotiable company draft, which he may endorse and cash immediately at the company's office, or keep for future use. A typical form of draft for refund is hereto attached, marked "Exhibit E".

In some instances, the sender does not call for the draft, but at the sender's request, it is sent to him.

If the sender cashes the draft, it is paid from moneys collected at the sending office for telegrams, money orders and other receipts, and the clerk at that office takes credit for the amount so paid to the sender. In the event that this amount is not sufficient, the manager draws the amount necessary from the local bank account, and in turn, if that account is not sufficient, the manager receives a check from the divisional headquarters cashier to meet such deficit.

i. Where the company has issued a draft, either to the sendee for the amount of the money order, or to the sender for the refund, and the draft is not immediately cashed, the Company holds the amount to be paid until the draft is presented by the payee or his transferee, and, upon such presentation, pays the amount of the draft.

10. Usually, the purpose of the money order has been accomplished; the sendee has received a draft and has cashed it.

11. In those instances in which the sendee has received a draft, but the draft has not been presented for payment, Western Union presently holds the moneys, awaiting presentation of the draft.

12. In those instances in which Western Union has been unable to deliver a draft to the sendee, the company has canceled the money order, and where it has been able to do so, has made refund to the sender.

13. Usually, the refund has been accomplished; the sender has received a draft for the refund and has cashed it.

14. In those instances in which the sender has received a draft for the refund, but the draft has not been presented for payment, Western Union presently holds the money, awaiting presentation of the draft.

15. In those instances in which the money order has been canceled, but Western Union has been unable to deliver a draft to the sender for the refund, Western Union presently holds the money awaiting the sender's request for the refund.

III.

16. In 1966, at the suggestion of New York and Pennsylvania, Western Union made a survey of more than 17,000 money orders purchased in 1943, 1948, 1953 and 1958, as to which Western Union still held the money received by it for money orders, such four years, at five year intervals, being chosen as sampling periods.

The said survey showed that as to 78.1% of the aggregate amount of the money orders examined, the company had not been able to effect payment and the money orders had been canceled, but that the company had not been able to make refund to the senders or to deliver drafts to them.

As to the other 21.9% of the amount of the money orders examined, drafts had been issued either to sendees or to senders. The survey did not show what portion of the 21.9% represented money orders as

to which drafts had been delivered to the sendees, and what portion represented money orders as to which drafts had not been delivered to the sendees, but to the senders for refunds.

IV.

17. The present proceeding relates to moneys presently held by Western Union on account of money orders purchased from the company on or before December 31, 1962.

18. In excess of $1,500,000.00 is still held by Western Union on account of money orders purchased from the company on or before December 31, 1962.

19. Of the said sum, approximately $100,000.00 is held by Western Union on account of money orders purchased from it in Pennsylvania.

20. The said sum of approximately $100,000.00 has been unclaimed for more than seven years by the persons thereto entitled.

21. The said sum of $100,000.00 is subject to escheat or custodial taking by the Commonwealth of Pennsylvania under the provisions of its laws.

The Act of Assembly of the Commonwealth of Pennsylvania approved May 2, 1889, P. L. 66, Sec. 3, as amended by the Act of July 29, 1953, P. L. 986, Sec. 1, Purdon's Pennsylvania Statutes, Vol. 27, Sec. 333, provides for escheat.

Under the Pennsylvania Fiscal Code, Act of April 9, 1929, P. L. 343, Sec. 1310, Purdon's Pennsylvania Statutes, Vol. 72, Sec. 1310, Pennsylvania may, in-

stead of instituting proceedings for the escheat of such property, take custody thereof without escheat, subject to the property or part thereof being refunded to any claimant or claimants establishing the right thereto.

A copy of such statutes is set forth in "Exhibit F" hereto attached.

22. Beginning in 1953, after the adoption of the Act of July 29, 1953, P. L. 986, and continuing to the present time, Pennsylvania has sought the escheat or custody of moneys held by Western Union on account of money orders purchased from the Company in Pennsylvania and unclaimed for the period of seven years by the persons thereto entitled.

23. In an action instituted in 1953 by the Commonwealth of Pennsylvania against Western Union, and affirmed in Gottlieb, Escheator v. Western Union Telegraph Company, 400 Pa. 337, it was held that Pennsylvania, as the State of origin of money orders as to which moneys held by Western Union were unclaimed for seven years, was entitled to the escheat or custody of such moneys. Upon appeal to the U. S. Supreme Court, the judgment of the Pennsylvania Court was reversed in Western Union Telegraph Company v. Pa., 368 U.S. 71, because of the potential claims of other States to the same intangibles, and because the Pennsylvania judgment could not protect Western Union from such potential claims of other States.

24. The plaintiff is informed that Florida asserts that under its laws, it is entitled to the custody of

such money if Florida was the state of destination of the money orders. As to money orders of which Pennsylvania was the State of origin and Florida was the State of destination, there is a controversy between Pennsylvania and Florida.

25. The plaintiff is informed that Oregon asserts that under its laws, the sendee of a money order is the donee beneficiary or creditor beneficiary of the money order even though no drafts were issued, and that as to money orders to a sendee in Oregon, it is the State entitled to the custody of such moneys. As to money orders of which Pennsylvania was the State of origin and Oregon was the State of destination, there is, therefore, a controversy between Pennsylvania and Oregon.

26. The plaintiff is informed that Virginia claims that where a draft was issued to a sendee in Virginia, that State is entitled to the custody of such moneys. As to money orders of which Pennsylvania was the State of origin, and drafts were issued to sendees in Virginia, there is, therefore, a controversy between Pennsylvania and Virginia.

27. The plaintiff is informed that under the New York Abandoned Property Law, Sec. 1309, as amended in 1969 ("Exhibit G" hereto attached), New York claims all moneys arising from money orders purchased from January 1, 1930 to January 1, 1958, without reference to any fact other than the purchase of the money order during such period. Neither the State of origin, the State of destination, nor the State in which a draft was issued, is recognized by New York as having any claim to such mon-

eys. Under the said statute, New York also claims as to money orders purchased from Western Union on or after January 1, 1958, (a) where the last known address of the purchaser is in New York, whether or not a draft has been issued; (b) where no address is shown on the records of Western Union and a draft was issued in New York; and (c) if no address is shown on the records of Western Union and no draft was issued.

By reason of New York's claim as to money orders purchased before January 1, 1958, there is, therefore, a controversy between New York and Pennsylvania as to money orders purchased in Pennsylvania, and where a State claims as the State of destination, or the State where a draft was issued, the controversy also includes such State or States.

By reason of New York's claim as to money orders purchased on or after January 1, 1958, in those cases where the address of the purchaser is not shown on Western Union's records, but the State of origin is shown on such records as being in Pennsylvania, there is a controversy between New York and Pennsylvania, and where the moneys are claimed by the State of destination, or the State where a draft was issued, the controversy also includes such State or States.

28. Western Union's books and records show the State or place of origin of every money order, as well as the State or place of destination of every money order. In many cases, its books and records do not show the address of the sender; likewise, in many cases, its books and records do not show the address of the sendee; and in many cases, its books and records

do not show the address of the payee of the draft issued by the Company.

29. No judgment of a Pennsylvania Court could be binding upon any other claimant State unless such other State were a party to the proceeding in the Pennsylvania court, and a Pennsylvania court cannot make any other State a party, without the consent of the latter State. If Pennsylvania were to intervene in a proceeding in a court of another State and obtain judgment, such judgment would not bind any other claimant States which did not intervene.

If actions were brought in the various States against Western Union for the same moneys, the decisions of their courts, under their respective laws and conflicts of law rules, might be inconsistent.

30. As to 78.1% of the sum of approximately $100,000.00 held by Western Union arising out of money orders of which Pennsylvania was the State of origin and as to which no drafts were issued, then Pennsylvania, the State of origin, claims such amounts, and the controversy is, therefore, between three states, (1) Pennsylvania as the State of origin, (2) the State of destination, if other than Pennsylvania, and (3) the State of New York, in which Western Union was incorporated.

As to the 21.9%

(1) if it be determined by this Court that issuance of a draft does not constitute payment of a money order or refund, but that the State of origin of the money orders for the said 21.9%

is entitled to such moneys, then, Pennsylvania is entitled to such 21.9% of the $100,000.00;

(2) if it be determined by this Court that issuance of a draft does not constitute payment of a money order or refund, but that the State of destination of the money orders is entitled to such moneys, then, conversely, where it was the State of destination, Pennsylvania is entitled.

31. If it be determined by this Court that the State of destination rather than the State of origin is the State entitled to the escheat or custody of the unclaimed moneys held by Western Union, then Pennsylvania would not be entitled to any part of the said sum of $100,000.00, except where it was both the State of origin and the State of destination. However, under such a ruling, Pennsylvania would be entitled as the State of destination as to unclaimed moneys arising from money orders destined to Pennsylvania. The amount held by Western Union for money orders purchased on or before December 31, 1962 and destined to Pennsylvania is approximately $90,000.00.

32. If it be determined by this Court that issuance of a draft constitutes absolute or conditional payment of a money order or a refund, then as to drafts issued to sendees or senders in Pennsylvania, Pennsylvania is entitled to the moneys held by Western Union for payment of the drafts.

33. Only by a judgment of this Court can it be determined which of the various States are entitled to the moneys held by Western Union, as above set forth.

34. Neither the plaintiff, Pennsylvania, nor the defendant, Western Union, can be protected from irreparable injury and loss of property unless this Court grants the relief sought by this Complaint.

35. The plaintiff has no adequate remedy at law, and no remedy whatsoever in any other Court.

Wherefore, the plaintiff prays:

(1) That this Court take jurisdiction of the parties and subject matter herein;

(2) That the Motion for Leave To File this Complaint be granted;

(3) That this Court hear and determine the controversies herein, either by referring this case to a Special Master or Federal District Court to take evidence and make appropriate reports, or in such other manner as the Court deems fit;

(4) That a temporary injunction be issued restraining the defendant, the State of New York, and other States named as defendants herein from proceeding with any action now pending, or from instituting any action hereafter, to escheat and/or take custody of said property, pending further orders of this Court;

(5) That a temporary injunction be issued restraining the defendant, The Western Union Telegraph Company, from paying, delivering, or in any manner relinquishing, the said property to the defendant, the State of New York, or to any other State, pending further orders of this Court;

(6) That judgment be entered that the moneys held by Western Union are subject to the escheat or custody of one or more of the following States:

(a) The State of origin of the money orders, as shown by the books and records of Western Union;

(b) The State of destination of the money orders, as shown by the books and records of Western Union;

(c) The State in which a draft has been issued for the amount of the money order or the amount of the refund, as shown by the books and records of Western Union;

(d) The State of last known address of the sender of a money order, as shown by the books and records of Western Union;

(e) The State of last known address of the sendee of a money order, as shown by the books and records of Western Union;

(f) The State of the last known address of the payee of a draft, as shown by the books and records of Western Union;

(g) The State of domicile of Western Union;

(h) Any other State as to which the facts adduced established such right.

(7) That such judgment decree that no State other than the State or States designated under (6) above has the power of escheat or custody of, or the right to prosecute a claim of escheat or custody against, such property.

(8) That the plaintiff, the Commonwealth of Pennsylvania, have such other and further relief as this Court may deem just.

WILLIAM C. SENNETT
Attorney General of Pennsylvania
JOSEPH H. RESNICK
Assistant Attorney General
Attorneys for Plaintiff
The Commonwealth of Pennvania

MICHAEL EDELMAN
Of Counsel

EXHIBIT A

(Face of Money Order)

20 ½

73 (Rev. 3-60)

A MESSAGE WITH YOUR MONEY ORDER IS ALWAYS WELCOME

WESTERN UNION
TELEGRAPHIC
MONEY ORDER

W. P. MARSHALL, PRESIDENT

THE FASTEST AND SAFEST WAY TO SEND OR RECEIVE MONEY

Send the following Money Order subject to conditions below and on back hereof, which are hereby agreed to:

ACCTG INFO | SENDING DATA

NUMBER | TIME FILED

OFFICE | DATE 19

$ AMT.
$ CHGS.
TOTAL
TAX
TOTAL

MOD

AMOUNT DOLLARS AND CENTS
(PRINT AMOUNT DOLLARS) (FIGURES)

PAY TO (PLEASE PRINT. IF WOMAN, GIVE MRS. OR MISS)

STREET ADDRESS

DESTINATION AND SENDER DESTINATION | NAME OF SENDER

WRITE YOUR MESSAGE HERE ONLY A FEW CENTS PER WORD WILL BE DELIVERED WITH MONEY ORDER

● Unless signed below the Telegraph Company is directed to pay this money order at my risk to such person as its paying agent believes to be the above named payee, personal identification being waived.

SENDER'S FULL NAME

SENDER'S ADDRESS | TELEPHONE NUMBER

Information for test question:

[Back of Money Order]

MONEY ORDERS ARE SUBJECT TO THE FOLLOWING CONDITIONS:

Domestic orders will be canceled and refund made to the sender if payment cannot be effected within 72 hours after receipt at paying office (Ellis Island, N. Y., excepted). Orders payable at Ellis Island will be canceled after the expiration of five days.

In the case of a Foreign Order the Foreign equivalent of the sum named in the order will be paid at the rate of exchange established by the Company or its agents on the date of the transfer.

In the case of a Foreign Order the equivalent, in the currency of the country of payment, of the sum named will be purchased promptly; and if for any reason payment cannot be effected, refund will be made by the Company and will be accepted by the depositor on the basis of the market value of such foreign currency in American funds, at New York, on the date when notice of cancelation is received there by the Company from abroad.

When the Company has no office at destination authorized to pay money, it shall not be liable for any default beyond its own lines, but shall be the agent of the sender, without liability, and without further notice, to contract on the sender's behalf with any other telegraph or cable line, bank or other medium, for the further transmission and final payment of this order.

In any event, the company shall not be liable for damages for delay, non-payment or underpayment of this money order, whether by reason of negligence on the part of its agents or servants or otherwise, beyond the sum of five hundred dollars, at which amount the right to have this money order promptly and correctly transmitted and promptly and fully paid is hereby valued, unless a greater value is stated in writing on the face of this application and an additional sum paid or agreed to be paid based on such value equal to one-tenth of one per cent thereof.

In the event that the company accepts a check, draft or other negotiable instrument tendered in payment of a money order, its obligation to effect payment of the money order shall be conditional and shall cease and determine in case such check, draft or other negotiable instrument shall for any reason become uncollectible, and in any event the sender of this money order hereby agrees to hold the telegraph company harmless from any loss or damage incurred by reason or on account of its having so accepted any check, draft or negotiable instrument tendered in payment of this order.

ALL MESSAGES INCLUDED IN MONEY ORDERS ARE SUBJECT TO THE FOLLOWING TERMS:

To guard against mistakes or delays, the sender of a message should order it repeated, that is, telegraphed back to the originating office for comparison. For this, one-half the unrepeated message rate is charged in addition. Unless otherwise indicated on its face,

this is an unrepeated message and paid for as such, in consideration whereof it is agreed between the sender of the message and this company as follows:

1. The company shall not be liable for mistakes or delays in the transmission or delivery, or for non-delivery, of any message received for transmission at the unrepeated-message rate beyond the sum of five hundred dollars; nor for mistakes or delays in the transmission or delivery, or for non-delivery, of any message received for transmission at the repeated-message rate beyond the sum of five thousand dollars, *unless specially valued;* nor in any case for delays arising from unavoidable interruption in the working of its lines; nor for errors in cipher or obscure messages.

2. In any event the company shall not be liable for damages for mistakes or delays in the transmission or delivery, or for the non-delivery, of any message, whether caused by the negligence of its servants or otherwise, beyond the sum of five thousand dollars, at which amount each message is deemed to be valued, unless a greater value is stated in writing by the sender thereof at the time the message is tendered for transmission, and unless the repeated-message rate is paid or agreed to be paid, and an additional charge equal to one-tenth of one per cent of the amount by which such valuation shall exceed five thousand dollars.

3. The company is hereby made the agent of the sender, without liability, to forward this message over the lines of any other company when necessary to reach its destination.

4. No responsibility attaches to this company concerning messages until the same are accepted at one of its transmitting offices; and if a message is sent to such office by one of the company's messengers, he acts for that purpose as the agent of the sender.

5. The transferring of the money and the transmission of the message together constitute one transaction and the cancelation by either the sender or the company of the money order cancels also any obligation on the part of the company to deliver the message. The message will be delivered to the payee of the money order only as and when the money is paid.

6. The company will not be liable for damages or statutory penalties in any case where the claim is not presented in writing to the company within sixty days after the message is filed with the company for transmission; provided, however, that this condition shall not apply to claims for damages or overcharges within the purview of Section 415 of the Communications Act of 1934.

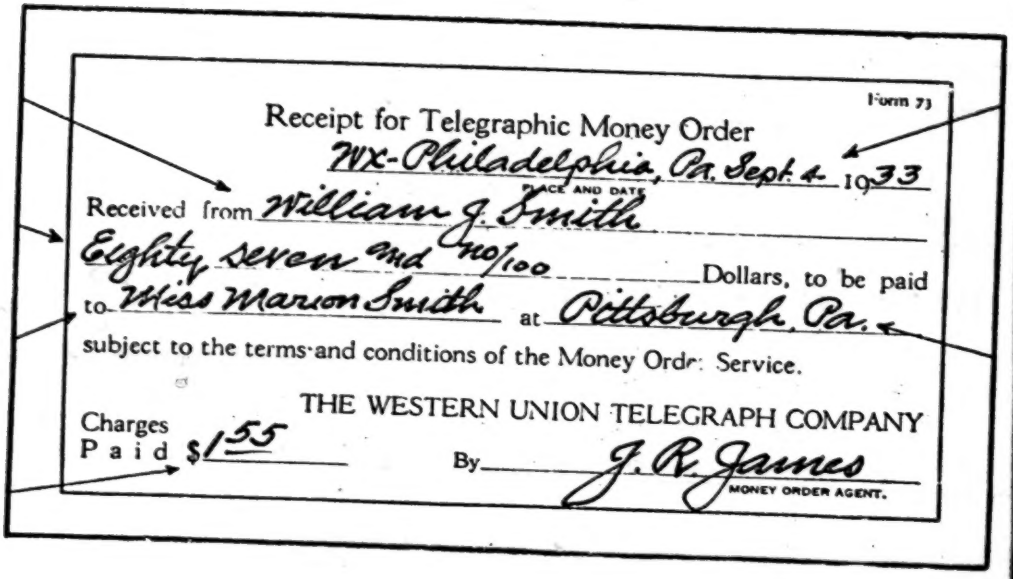
7. It is agreed that in any action by the company to recover the tolls for any message or messages the prompt and correct transmission and delivery thereof shall be presumed, subject to rebuttal by competent evidence.

8. No employee of the company is authorized to vary the foregoing.

The Western Union Telegraph Company
incorporated
R. B. White, President

EXHIBIT B

FIG. 2—SENDER'S RECEIPT—FORM 73



Form 73

Receipt for Telegraphic Money Order

WX-Philadelphia, Pa. Sept 4 1933
PLACE AND DATE

Received from William J. Smith

Eighty seven and no/100 Dollars, to be paid

to Miss Marion Smith at Pittsburgh, Pa.

subject to the terms and conditions of the Money Order Service.

THE WESTERN UNION TELEGRAPH COMPANY

Charges Paid $1.55

By J. R. James
MONEY ORDER AGENT.

EXHIBIT C

Form 75-C

QUICK SERVICE

WESTERN UNION

LOW RATES

MONEY ORDER NOTICE

Money Sent by Telegraph and Cable to All the World

R. B. WHITE, PRESIDENT — NEWCOMB CARLTON, CHAIRMAN OF THE BOARD — J. C. WILLEVER, FIRST VICE-PRESIDENT

B- LOS ANGELES CALIF (OFFICE) SEPT 4TH 1933 (DATE)

No. $ 231

To MRS FRANCES THOMPSON (MR., MRS. OR MISS)

2740 WILSHIRE BLVD (ADDRESS)

We have received a telegraphic money order for you with the following message:

WIRE TRAIN AND TIME ARRIVAL

Will you please call at our office, 3225 WILSHIRE BLVD to receive the money as soon as possible and in no case later than 72 hours since at the end of that time we are required to cancel the order and return the amount to the sender.

Please bring this notice with you and also satisfactory evidence of identity such as some of the following:

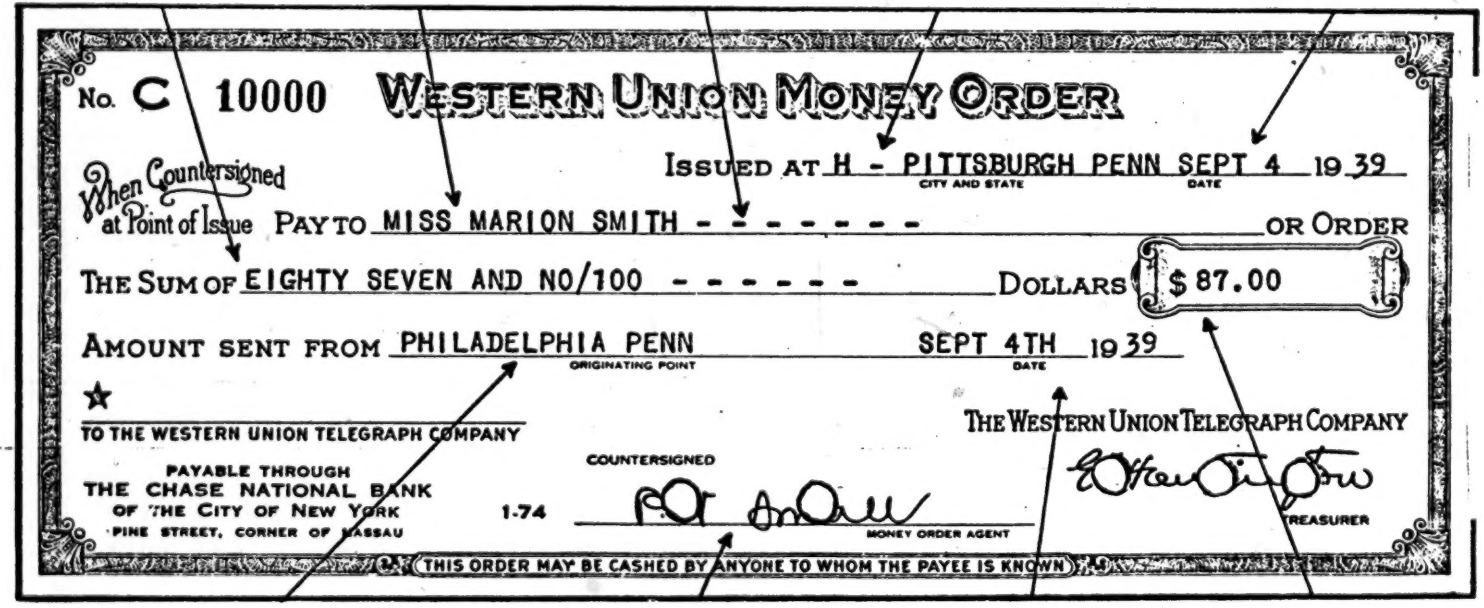
Membership cards	Bank book
Receipted bills	Automobile license
Letters addressed to you	Western Union collect card

or any other documentary evidence you may have.

Bring This Notice With You

THE WESTERN UNION TELEGRAPH COMPANY

FIG. 4—MONEY ORDER DRAFT—FORM 2738



★This line ordinarily to remain blank but may be used to show: (a) sender's name when order is payable to a firm; (b) name of payee and BNK point when passed through a forwarding bank; (c) description of refunded money orders; or (d) the words "Cashed for Columbus State Bank credit John Doe," etc.

NOTE—Form 3300-C accompanies this draft when delivered or mailed.

EXHIBIT D

FIG. 13—DRAFT COVERING REFUND OF AN ORDER—FORM 2738

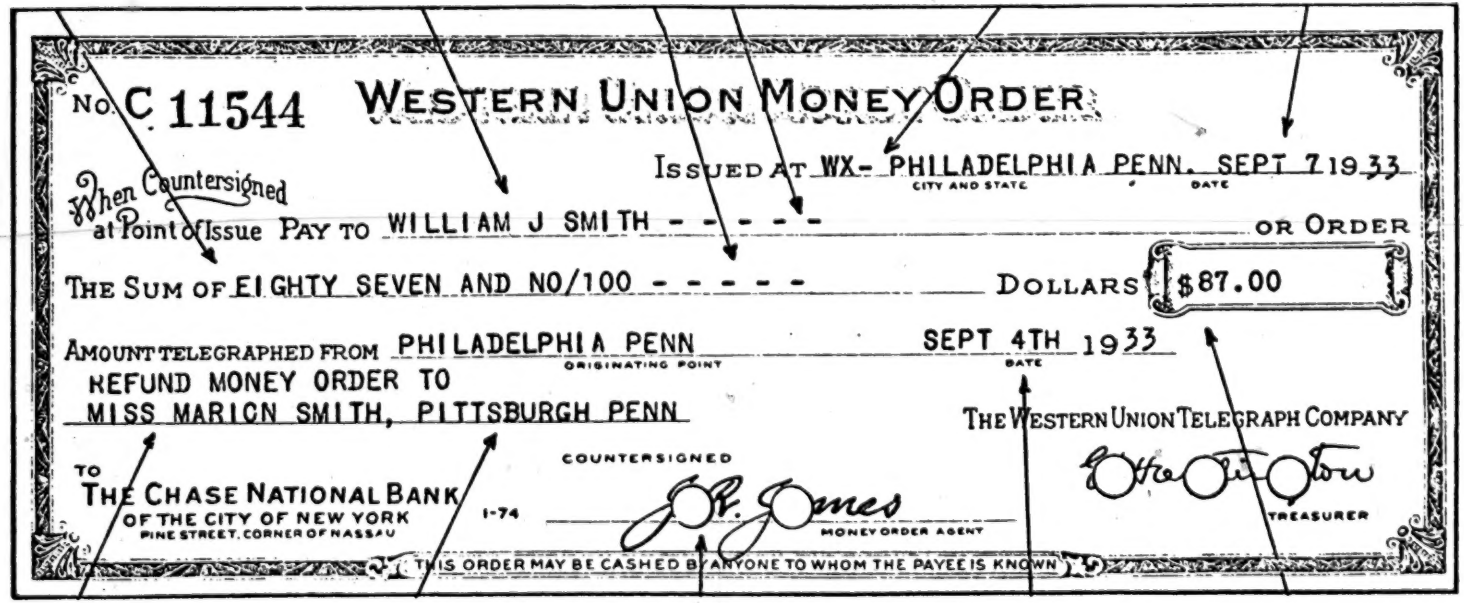


EXHIBIT E

EXHIBIT F

PENNSYLVANIA ACT OF MAY 2, 1889, P. L. 66, Sec. 1, as amended by Act of July 29, 1953, P. L. 1, P.S. 333

"Whenever the . . . person entitled to any . . . personal property within or subject to the control of the Commonwealth, or the whereabouts of such . . .. person entitled, has been or shall be and remain unknown for the period of seven successive years, such . . . personal property . . . shall escheat to the Commonwealth . . ."

"Whenever any . . . personal property within or subject to the control of the Commonwealth has been or shall be and remain unclaimed for the period of seven successive years, such . . . personal property shall escheat to the Commonwealth."

PENNSYLVANIA FISCAL CODE, ACT OF APRIL 9, 1929, P. L. 343, Section 1310, 72 P.S. 1310

"Whenever any person, firm, association, bank, trust company or other corporation whatsoever, shall hold or be possessed of any items of money or property which are or shall be escheatable by any Act of General Assembly, the Department of Revenue may . . . suggest to the Attorney General that, instead of

proceeding for the escheat of such items . . . the Attorney General apply, by petition, for an order . . . directing the payment of the same into the State Treasury to the credit of the Commonwealth . . . all amounts so paid to be subject to being refunded by petition to the Board of Finance and Revenue."

EXHIBIT G

McKINNEY'S CONSOLIDATED LAWS
OF NEW YORK
ANNOTATED

Book 2½

ABANDONED PROPERTY LAW
Sec. 1309
As amended L 1969, c. 1114, Sec. 1-5
effective May 26, 1969

---

§1309. Uncashed travelers checks and money orders

1. Any amount held or owing by any organization other than a banking organization for the payment of a travelers check on which such organization is directly liable, sold by such organization on or after January first, nineteen hundred thirty, shall be deemed abandoned property if such amount is held or owing for payment of a travelers check which shall have been outstanding for more than fifteen years from the date of its sale.

2. Any amount held or owing by any such organization for the payment of a money order, or for the payment of any instrument drawn or issued to effect the payment thereof, sold by such organization on or after January first, nineteen hundred thirty and prior to January first, nineteen hundred fifty-eight shall be

deemed abandoned property when such amount has remained unpaid to the rightful owner thereof for seven years.

3. Any amount held or owing by any such organization for the payment of such money order, or any instrument drawn or issued to effect the payment thereof, sold by such organization on or after January first, nineteen hundred fifty-eight shall be deemed abandoned property when such amount has remained unpaid to the rightful owner thereof for seven years, and either

(a) the last known address of the purchaser of such money order according to the records of such organization is located within this state and no instrument has been drawn or issued to effect the payment thereof, or

(b) such address is located within this state and an instrument has been drawn or issued to effect such payment, or

(c) such address cannot be obtained from the records of such organization and an instrument to effect such payment has been drawn or issued in this state, or

(d) such address cannot be obtained from the records of such organization and no instrument to effect such payment has been drawn or issued.

4. On or before the first day of June in each year commencing with the year nineteen hundred forty-nine every such organization shall pay to the state comptroller all property deemed abandoned pursuant to this section. Such payment shall be accompanied

by a statement setting forth such information as the state comptroller may require.

5. Notwithstanding any other provision of law, the rights of a holder of a travelers check or money order to payment from any such organization shall be in no wise affected, impaired or enlarged by reason of the provisions of this section or by reason of the payment to the state comptroller of abandoned property hereunder, and any such organization which has paid to the state comptroller abandoned property held or owing for the payment of a travelers check or money order shall, upon making payment to the person appearing to its satisfaction to be entitled thereto and upon submitting to the state comptroller proof of such payment and the identifying number of the travelers check or money order so paid, be entitled to claim reimbursement from the state comptroller of the amounts so paid, and after audit the state comptroller shall pay the same.

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1969
No. Original

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,
Defendants

PROOF OF SERVICE

I, JOSEPH H. RESNICK, Assistant Attorney General of the Commonwealth of Pennsylvania, hereby certify that I am one of the attorneys for the plaintiff, Commonwealth of Pennsylvania, that I am a member of the Bar of the Supreme Court of the United States, and that on the 9th day of March, 1970, I served copies of the foregoing Motion for Leave to File Complaint, and Complaint, and also of the Brief in Support of the Motion for Leave to File Complaint, on each of the parties defendant by depositing such copies, air mail postage prepaid, in a United States Post Office, addressed as follows:

1. State of New York
   (a) Hon. Nelson A. Rockefeller
   Governor of the State of New York
   Albany, N. Y.
   (b) Louis J. Lefkowitz
   Attorney General of the State of New York
   Albany, N. Y.
2. State of Florida
   (a) Hon. Claude R. Kirk, Jr.
   Governor of the State of Florida
   Tallahassee, Fla.
   (b) Hon. Earl Faircloth
   Attorney General of the State of Florida
   Tallahassee, Fla.
3. State of Oregon
   (a) Hon. Tom McCall
   Governor of the State of Oregon
   Salem, Ore.
   (b) Hon. Lee Johnson
   Attorney General of the State of Oregon
4. Commonwealth of Virginia
   (a) Hon. Mills E. Goodwin, Jr.
   Governor of the Commonwealth of Virginia
   Richmond, Va.
   (b) Hon. Robert Y. Button
   Attorney General of the Commonwealth of Virginia
   Richmond, Va.

5. The Western Union Telegraph Company

(a) John M. Evans, Esq.
Vice-President and General Counsel
The Western Union Telegraph Company
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New York, N. Y.

(b) Peter F. Oates, Esq.
Assistant General Counsel
The Western Union Telegraph Company
60 Hudson Street
New York, N. Y.

JOSEPH H. RESNICK
Assistant Attorney General, Commonwealth of Pennsylvania

SUPREME COURT, U. S.

MAR 13 1970

JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

October Term, 1969

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,
Defendants

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT

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JURISDICTION

The original jurisdiction of the Court is invoked under Article III, Sec. 2 of the Constitution of the United States, and the United States Code, Title 28, Section 1251 (a) (1) and (b) (3).

STATEMENT OF THE CASE

The material facts of the controversies which the Commonwealth of Pennsylvania requests this Court to determine are set forth in the Complaint and are reviewed below.

The defendant, The Western Union Telegraph Company, hereinafter referred to as "Western Union", is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 60 Hudson Street, New York, New York. Western Union is authorized to do business in most of the States of the United States and in the District of Columbia, and prior to divestment on September 30, 1963 of its international operations, was also authorized to do business in certain foreign countries. On or about October 7, 1943, Western Union merged with Postal-Telegraph, Inc., a Delaware corporation, and operating and sales companies, and assumed the obligations of the merged companies.

In addition to its telegraphic message business, Western Union carries on a telegraphic money order service, receiving money from a purchaser of a telegraphic money order at one place for payment of the amount so received to a named person at another place. Telegraphic money orders are hereinafter referred to as "money orders" or "money order".

To the extent that telegraphic money orders of the predecessor companies are involved in these proceed-

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STATEMENT

The Commonwealth of Pennsylvania has filed a Motion for Leave to File Complaint against the State of New York, the State of Florida, the State of Oregon, the Commonwealth of Virginia, and The Western Union Telegraph Company, a New York Corporation.

Western Union is joined as a party defendant because the subject matter of the controversies herein consists of moneys received by Western Union for money orders as to which the company has not been able to effect payment after a long passage of time, and the judgment prayed for herein would include an order upon Western Union to deliver the said moneys to one or more of the States, either as an escheat or for custody.

This brief is in support of the motion.

JURISDICTION

The original jurisdiction of the Court is invoked under Article III, Sec. 2 of the Constitution of the United States, and the United States Code, Title 28, Section 1251 (a) (1) and (b) (3).

STATEMENT OF THE CASE

The material facts of the controversies which the Commonwealth of Pennsylvania requests this Court to determine are set forth in the Complaint and are reviewed below.

The defendant, The Western Union Telegraph Company, hereinafter referred to as "Western Union", is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 60 Hudson Street, New York, New York. Western Union is authorized to do business in most of the States of the United States and in the District of Columbia, and prior to divestment on September 30, 1963 of its international operations, was also authorized to do business in certain foreign countries. On or about October 7, 1943, Western Union merged with Postal-Telegraph, Inc., a Delaware corporation, and operating and sales companies, and assumed the obligations of the merged companies.

In addition to its telegraphic message business, Western Union carries on a telegraphic money order service, receiving money from a purchaser of a telegraphic money order at one place for payment of the amount so received to a named person at another place. Telegraphic money orders are hereinafter referred to as "money orders" or "money order".

To the extent that telegraphic money orders of the predecessor companies are involved in these proceed-

ings, such telegraphic money orders are herein treated as if they were originally Western Union telegraphic money orders.

In the conduct of its money order service, Western Union uses a number of forms, starting with the "Western Union Telegraphic Money Order" (Complaint, "Exhibit A-1, Face of Money Order", and "Exhibit A-2, Back of Money Order").

The company uses the term "sender" to designate the purchaser of a money order. For the purpose of the Complaint, the term "sendee" is used to designate the person to whom the sender directs the amount of the money order to be paid. The term "sending office" or "office of origin" is used to designate the company office in which the sender purchases the money order; the term "paying office" or "office of destination" is used to designate the company office which is directed to pay the money to the sendee. The term "State of origin" or "place of origin" is used to designate the State or place where the money order is purchased and Western Union receives the money; the term "State of destination" or "place of destination" is used to designate the State or place where the money order directs the amount of the money order to be paid to the sendee.

The procedure observed by Western Union in its telegraphic money order service is as follows:

The sender fills out a money order form at a Western Union sending office and gives it to the company's clerk, together with money in the amount to be paid to the sendee, and the company's charges.

The face of the money order (Complaint "Exhibit A-1") states that the money order is subject to the conditions on its face and on the back thereof.

One of the conditions on the back of the money order is as follows:

"Domestic money orders will be canceled and refund made to the sender if payment cannot be made within 72 hours after receipt at the paying office . . ."

As to other money orders the period after which it will be canceled if payment to the sendee cannot be effected is 5 days or 10 days.

The clerk gives the sender a receipt for the money (Complaint, "Exhibit B").

After a money order is purchased, the clerk at the office of origin sends a telegraphic inter-office message to the company's paying office nearest the sendee, directing payment of the amount of the money order to the sendee.

(In no case is the money itself transmitted from the sending office where it is received to the paying office. To the contrary, the money received by the company remains at the sending office, and is intermingled with moneys collected there for telegrams and other services. The intermingled moneys are used by the sending office for paying any incoming money orders and other authorized cash disbursements of the office. Accumulation of surplus cash, if any, is deposited in a local bank account maintained by the manager in the name of Western Union. Accumulation of excess funds, if any, in this bank is remitted to the Divisional Headquarters Cashier, who

in turn remits to the company Treasurer. In the event the amount of the manager's bank account, together with cash on hand in the sending office, is insufficient to meet the payment of incoming money orders and expenses, the Divisional Headquarters Cashier sends the manager a check to meet the deficit.)

When the paying office receives the telegraphic inter-office message, directing payment of the amount of the money order to the sendee, the clerk at the paying office notifies the sendee, except as otherwise arranged, that a telegraphic money order has been received for payment of money to him, and to call at the paying office to receive the money (Complaint, "Exhibit C"). In some cases, where the sendee is otherwise aware of the money order, notice to him may not be necessary. In a number of other cases, the company attempts to give such notice, but is unsuccessful in so doing.

When the sendee calls at the paying office, he is given a company negotiable draft (Complaint, "Exhibit D"), which he may cash immediately, or take with him for future use. In some cases, at the request of the sender or sendee, the company sends the draft to the sendee.

If the company is unable to contact the sendee, or if, for any other reason, the company is unable to make delivery of a draft to him, then, upon the expiration of 72 hours or other period prescribed by the money order, the money order is canceled by a telegraphic message from the office of destination notifying the office of origin that payment has not

been effected. Once the money order is canceled, the company will not thereafter issue a draft to the sendee or recognize any rights in him under the money order.

Upon cancellation of the money order, the office of origin so notifies the sender, and when he calls at the office of origin, he is given a draft for the refund (Complaint, "Exhibit E"), which he may endorse and cash immediately, or keep for future use. If the company is unable to contact the sender, or if, for any other reason, it is unable to make delivery of a draft to him, the company continues to hold the money for refund to the sender.

Usually the purpose of the money order has been accomplished; the sendee has received a draft and has cashed it.

In a number of instances of money orders purchased from Western Union on or before December 31, 1962, however, after the sendee has received a draft, it has not been cashed at the paying office or presented at a later date, and in each such case Western Union presently holds the moneys awaiting presentation of the draft.

In a number of other instances, the company has not been able to deliver a draft to the sendee, and after the expiration of the 72 hour period or other applicable period, the company has canceled the money order by a telegraphic message from the office of destination to the office of origin of the money order.

The refund to the sender has usually been accomplished; the sender has received a draft for the refund and has cashed it.

In a number of instances, however, after the sender has called at the office of origin and has received a draft for the refund, it has not been cashed at the office or presented at a later date, and in each such case Western Union presently holds the moneys awaiting presentation of the draft.

In a number of other instances, the company has not been able to deliver a draft for refund to the sender, and the company presently holds the moneys awaiting the sender's request for a refund.

In 1966, at the suggestion of New York and Pennsylvania, Western Union made a survey of more than 17,000 money orders purchased in 1943, 1948, 1953 and 1958, as to which Western Union still held the money received by it for such money orders, such four years, at five year intervals, being chosen as sampling periods.

The said survey showed the following:

(a) As to 78.1% of the aggregate amount of the money orders examined:

(1) the company had been unable to deliver either money or a draft to the sendee;

(2) the money order had been canceled by a telegraphic message from the office of destination to the office of origin;

(3) the office of origin had been unable to deliver either money or a draft to the sender for the refund;

(4) Western Union still held the money received by it at the office of origin.

(b) As to 21.9% of the aggregate amount of the money orders examined:

(1) drafts had been issued either to the sendee or to the sender for the amount of the refund. (The survey did not show what portion of the drafts had been issued to sendees, and what portion to the senders for the refunds.)

(2) the drafts had not been cashed or later presented for payment;

(3) Western Union still held the money awaiting presentation of the drafts.

Western Union presently holds more than $1,500,000.00 on account of money orders purchased on or before December 31, 1962. Of the said sum, approximately $100,000.00 is held by Western Union on account of money orders purchased from it in offices of origin in Pennsylvania.

Pennsylvania claims that it is entitled, under the escheat and custody laws, to the amount of $100,000.00 held by Western Union on account of money orders purchased in Pennsylvania. Other States may also claim that they are entitled, under the escheat or custody laws, to the escheat or custody of the amounts

held by Western Union on account of money orders purchased in those States.

Florida asserts that the sendee is the owner of moneys held by Western Union for such money orders, and that where the money order directed that the amount of the money order be paid to a sendee in Florida, that State is the only State entitled under its laws, to the escheat or custody of the unclaimed moneys. Other States may take a like position.

Oregon declares that the sendee may be a creditor beneficiary or donee beneficiary of the money order, and that if the last known address of the sendee is in Oregon, that State is entitled, under its laws, to the escheat or custody of the unclaimed moneys. Other States may take a similar position.

Virginia declares that when a draft has been issued to the sendee or sender, and the company's books and records show the last known address of the payee of the draft to be in Virginia, that State is the State entitled, under its laws, to the escheat or custody of the unclaimed amounts.

Other states may claim as the state in which drafts were issued to the sendee or sender.

New York claims all unclaimed moneys held by Western Union arising from money orders purchased from Western Union up to January 1, 1958, regardless of the State or place of origin or destination of the money orders. As to money orders purchased on or after January 1, 1958, New York asserts claims inconsistent with those of Pennsylvania, Florida, Oregon and Virginia.

This case involves unclaimed moneys held by Western Union for persons entitled thereto under money orders purchased from Western Union in Pennsylvania. However, the questions in this case relate to all unclaimed moneys held by Western Union arising from money orders purchased from the Company.

QUESTIONS INVOLVED

I. Is a justiciable controversy between States warranting the exercise of the Court's original jurisdiction presented by the Complaint?

II. Does *Texas v. New Jersey,* 379 U.S. 674, settle the question of which State will be allowed to escheat or take custody of unclaimed moneys arising from telegraphic money orders?

III. Should a rule be adopted that the only State entitled to the escheat or custody of unclaimed moneys arising from telegraphic money orders is the State of origin (State of purchase) of the money order?

SUMMARY OF ARGUMENT

I. The purpose of this proceeding is to obtain a judicial determination of controversies between States.

Several States claim the right to escheat or take custody of the same intangibles, obligations of Western Union arising from telegraphic money orders purchased from the Company in one State for the payment of moneys to persons either in the same State or in other States. The controversies exist because the Constitution of the United States prevents more than one State from escheating or taking custody of a given item of property.

Since the controversies are between States they are justiciable controversies within the purview of Article A III, Section 2 of the Constitution of the United States, and Title 28, Section 1251 of the United States Code.

II. Pennsylvania claims the right of escheat or custodial taking of these obligations as the State of origin of the telegraphic money orders; Florida and Oregon claim the right as the State of destination of the telegraphic money orders; Virginia claims where drafts have been issued in that State to the sendees of the money orders for the amount thereof. New York claims as the State of domicile of the Company.

In order to determine which of the States has the right to the escheat or custodial taking of the intan-

gibles where the telegraphic money order was purchased in one State directing payment to a sendee in another State, it is necessary that a rule or rules be formulated to apply to such telegraphic money order transactions.

III. In *Texas v. New Jersey*, the Court adopted rules for the determination of the priority of the right of escheat between States claiming the same intangibles, the basic rule adopted being that where the last known address of the creditor is shown on the books and records of the debtor, the State of last known address of the creditor has the primary right of escheat or custodial taking. In that case, the creditor was identified on the books and records of the debtor. The rule in that case cannot be applied to telegraphic money order transactions, which differ from the debts in the above case. The telegraphic money orders are multi-phased and are multi-state as well. The identity of the creditor is not shown on the debtor's books and records. Each State, therefore, applies its own laws to determine the identity of the creditor. Because one phase may be in one State and another phase may be in another State, each State may look to the phase of the telegraphic money order in that State to determine who is the creditor. Since the laws of the States differ, there is no one rule for the identification of the creditor.

Therefore, a rule is required which is not dependent upon the identity of the creditor, but upon the nature of the telegraphic money order transaction, a rule which can be applied to every telegraphic money order transaction.

Western Union's records show the State of origin of every telegraphic money order. The moneys deposited with Western Union for the telegraphic money order are received by the Company in every case in the State of origin. In almost 80% of the telegraphic money orders here involved, the Company was unable to effect payment to the sendee, and under the terms of the telegraphic money order, the money order was canceled and refund required to be made to the sender in the State of origin.

A rule giving the primary right of escheat or custodial taking to the State of origin tends to distribute escheats to the States in proportion to the commercial activities of their residents, and would return the moneys to the States in which the moneys were received by Western Union. Such a rule is fair and equitable.

It is, therefore, submitted that the following rule should be adopted:

> "The State of origin of a telegraphic money order, as shown by Western Union's records, is the only State entitled to the escheat or custody of unclaimed moneys arising from the money orders, to the extent of that State's power under its own laws to escheat or to take custodially."

ARGUMENT

I. THE COMPLAINT PRESENTS A JUSTICIABLE CONTROVERSY BETWEEN STATES

The Complaint sets forth that Pennsylvania has the right, under its laws,[1] to the escheat and custody of intangibles arising from the purchase in Pennsylvania of telegraphic money orders, where the amounts received by Western Union have not been paid to the person entitled and have been unclaimed for more than seven years. New York claims such right under its Abandoned Property Law.[2] The Due Process Clause of the Fourteenth Amendment of the Constitution of the United States prevents more than one State from escheating or taking custody of a given item of property. *Texas v. New Jersey,* 379 U.S. 674.

There is, therefore, a justiciable controversy between Pennsylvania and New York within the meaning of Article III, Sec. 2, of the Constitution of the United States and Title 28, Sec. 1251 (a) (1) of the United States Code.

Florida claims that where telegraphic money orders direct payment to a person in Florida, and such moneys are unclaimed, Florida is the State which is

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[1] Act of May 2, 1889, P. L. 66, Sec. 3, as amended by Act of July 29, 1953, P. L. 986, Sec. 1; Pennsylvania Fiscal Code, Act of April 9, 1929, P. L. 343, Sec. 1310. (See appendix).

[2] New York Abandoned Property Law, Sec. 1309. (See appendix).

entitled under its laws to the escheat or custody of the moneys. Therefore, as to telegraphic money orders purchased in Pennsylvania and destined to persons in Florida, the controversy includes Florida.

Oregon makes a similar claim on the ground that the person to whom the money order directs the money to be paid is a donee beneficiary or creditor beneficiary of the money order. As to telegraphic money orders purchased in Pennsylvania, but destined to persons in Oregon, the controversy is between Pennsylvania, New York and Oregon.

Virginia asserts that when Western Union gives a draft to the person to whom the telegraphic money order directs payment to be made, the State in which the draft is delivered is entitled to the escheat or custody of the unclaimed moneys held for payment of the draft. As to telegraphic money orders purchased in Pennsylvania for which drafts were delivered in Virginia by Western Union, the controversy is between Pennsylvania, New York and Virginia.

While the Complaint is directed to telegraphic money orders purchased in Pennsylvania, the same questions and problems exist as to unclaimed moneys held by Western Union arising out of telegraphic money orders purchased in all of the States and foreign countries in which Western Union has sold telegraphic money orders.

The controversy between Pennsylvania and New York, and the concomitant controversies between those States and Florida, Oregon and Virginia respectively, as well as the controversies involving

States which may, with leave of this Court, intervene in these proceedings, constitute justiciable controversies warranting the exercise of the Court's original jurisdiction.

In *Texas v. Florida,* 306 U.S. 398, 405, in deciding whether the controversy there warranted the exercise of original jurisdiction, this Court looked to the common law and equity for guidance. The Court said in that case:

> "Our constitutional authority to hear the case and grant relief turns on the question whether the issue framed by the pleadings constitutes a justiciable 'case' or 'controversy' within the meaning of the constitutional provision, and whether the facts alleged and found afford an adequate basis for relief according to accepted doctrines of the common law or equity systems of jurisprudence, which are guides to decision of cases within the original jurisdiction of this court.
>
> 407. "When, by appropriate procedure, a court possessing equity powers is in such circumstances asked to prevent the loss which might otherwise result from independent prosecution of rival but mutually exclusive claims, a justiciable issue is presented for adjudication which, because it is a recognized subject of the equity procedure which we have inherited from England, is a 'case' or 'controversy', within the meaning of the Constitutional provision; and when the case is one prosecuted between States which are the rival claimants, and the risk of loss is shown to be real and substantial, the case

> is within the original jurisdiction of this Court conferred by the Judiciary Article."

In the present case, the facts averred in the Complaint likewise afford an adequate basis for relief. The exercise by this court of its original jurisdiction will prevent the loss which might otherwise result from the prosecution of rival but mutually exclusive claims. Unless this Court exercises such jurisdiction, the States will be without a forum to determine which of the rival but mutually exclusive claims is the claim which may be enforced.

In *Western Union Telegraph Co. v. Pennsylvania,* 368 U.S. 71, a case in which Pennsylvania failed to invoke the original jurisdiction of the Court and obtained a judgment of escheat in its own courts, this Court reversed the judgment because New York made a like claim to the same intangible property. This Court declared that since there was a controversy between the two States, application should have been made by Pennsylvania for the exercise of this Court's original jurisdiction. The Court said (79):

> "This makes it imperative that controversies between different States over their right to escheat intangibles be settled in a forum where all the States that want to do so can present their claims for consideration and final authoritative determination. Our Court has jurisdiction to do that."

The controversies which were referred to were left for future determination, and the Court said:

> "Nor need we, at this time, attempt to decide the difficult legal question presented when many

> different States claim power to escheat intangibles involved in transactions taking place in many States. It will be time enough to consider these complicated problems when all interested States—along with all other claimants—can be afforded a full hearing and a final, authoritative determination."

The questions which that case left for future decision are presented in the instant proceeding.

In *Texas v. New Jersey et al.*, 371 U.S. 873, there was a controversy, as in *Western Union v. Pennsylvania,* supra, between a number of States as to the right to escheat the same intangibles, and one of the claimant States, Texas, filed a Motion in this Court for Leave to file Bill of Complaint. This Court granted the Motion in the exercise of its original jurisdiction. After hearing, an opinion was delivered in *Texas v. New Jersey,* 379 U.S. 674, supra.

In *Connecticut Mutual Life Ins. Co. v. Moore,* 333 U.S. 541, 555, Justice Frankfurter said, in a dissenting opinion:

> "It is precisely for the settlement of such controversies among the several States that the Constitution conferred original jurisdiction upon this Court."

The present case involves the same kind of controversy as there was between States in the Western Union case, and in the case of *Texas v. New Jersey*—a controversy between States as to their respective rights of escheat or custody of the same intangibles.

As in those cases, so in this case, only this Court can determine the controversy.

II.

THERE IS NO PREVAILING RULE BY WHICH THE CONTROVERSIES IN THIS CASE CAN BE DETERMINED, AND THE ADOPTION OF A RULE IS NECESSARY

In *Texas v. New Jersey*, 379 U.S. 674, supra, several States claimed the right to the escheat or custody of the same intangibles. Since the Due Process Clause of the Fourteenth Amendment prevents more than one State from escheating or taking custody of the same given item of property, and since the States separately are without constitutional power to provide a rule to settle such an interstate controversy and there is no applicable federal statute, the Court in that case adopted the following rules to settle the question of which State should be allowed to escheat or take custody of the intangibles in that case:

> 1. Each item of property as to which a last known address of the person entitled thereto is shown on the books and records of the debtor, is subject to escheat or custodial taking only by the State of the creditor's last known address, as shown on the debtor's books and records, to the extent of that State's power under its own law to escheat or to take custodially.
>
> 2. Each item of property as to which there is no address of the person entitled shown on the books and records of the debtor, is subject to escheat or custodial taking by the State in

> which the debtor was incorporated, . . ., subject to the right of any other State to recover such property from the State of the debtor's incorporation, upon proof that the last known address of the creditor was within such other State's borders.
>
> 3. Each item of property as to which the last known address of the person entitled as shown on the books and records of the debtor, is in a State, the laws of which do not provide for escheat or custodial taking, is subject to escheat or custodial taking by the State in which the debtor was incorporated, . . . subject to the right of the State of the last known address to recover the property from the State of incorporation of the debtor, if and when the law of such other State makes provision for escheat or custodial taking of the property.

In that case, the creditor was identified on the books of the debtor, and all that was necessary was to determine his last known address, as shown on the books and records of the debtor.

In the present case, the identity of the creditor cannot be determined by a mere reference to the debtor's books and records, because the obligations arising from telegraphic money orders are different from obligations arising from other transactions.

Telegraphic money order transactions have multiple phases, and such phases may be in different States. Under the laws of one state, one phase may be looked to to determine who is the creditor, while

under the laws of another State, another phase may be looked to for such determination. When two phases occur in two separate States, and under the laws of the State of the first phase, one person is the creditor, while under the laws of the State of the second phase, another person is the creditor, the identity of the creditor cannot be said to be shown on the books and records of the debtor, and, consequently, it cannot be said that the last known address of the creditor is shown on the books and records of the debtor. Under these circumstances, the rule in *Texas v. New Jersey* is inapplicable.

As said by the California Law Revision Commission in "Recommendations Relating to Escheat", submitted to the Governor of California in 1967 (page 5):

> "The opinion (in Texas v. New Jersey) indicates that the creditor was identified in each instance . . . Thus, the Supreme Court did not have before it the problems that arise from uncashed travelers checks and money orders . . . Consequently, the rules formulated by the Court do not adequately cover these problems.
>
> "It usually is impossible to apply literally to such instruments the basic rule stated in Texas v. New Jersey (escheat to the State of obligee's last known address, as shown on the obligor's records)."

Because of the difference between the debts in *Texas v. New Jersey* and the intangibles in the present case, the rules stated in *Texas v. New Jersey* are inapplicable here.

To hold that since the creditor is not identified, no address of the person entitled in this case is shown on the books and records of Western Union and that, therefore, the second part of the rule in *Texas v. New Jersey* (escheat to the State of domicile of the obligor) applies here, would tend to frustrate the purpose of the Supreme Court in *Texas v. New Jersey* "to distribute escheats among the States in the proportion of the commercial activities of their residents".

New York would thereby obtain a windfall of more than $1,500,000.00, to the exclusion of all other States, despite the fact, as stated by the California Commission in its "Recommendations Relating to Escheat" (page 8), that "most of the money orders are purchased near the purchaser's home".

The principles of equity and fairness among the States require an escheat rule which is responsive to the problems and nature of telegraphic money orders.

III.

THE FOLLOWING RULE IS SUBMITTED: "THE STATE OF ORIGIN OF A TELEGRAPHIC MONEY ORDER, AS SHOWN BY WESTERN UNION'S RECORDS, IS THE ONLY STATE ENTITLED TO THE ESCHEAT OR CUSTODY OF UNCLAIMED MONEYS ARISING FROM THE MONEY ORDERS, TO THE EXTENT OF THAT STATE'S POWER UNDER ITS OWN LAWS TO ESCHEAT OR TO TAKE CUSTODIALLY"

The basic controversy here is between the State of origin and the State of destination of telegraphic money orders. Pennsylvania claims the right, under its own laws, to escheat or take custodially the intangibles herein, aggregating approximately $100,000.00, arising from telegraphic money orders purchased in Pennsylvania, and as to which Pennsylvania is, therefore, the State of origin. Florida claims the same right, under its own laws, in those cases in which it is the State of destination; Oregon also claims the same right, under its own laws, in those cases in which it is the State of destination, on the ground that the sendee is a donee or creditor beneficiary; Virginia asserts the right, under its own laws, when the sendee in Virginia has received a draft for the amount of the telegraphic money order.

Except where the laws of the State of origin and the State of destination have similar laws, that is, that the State of origin is the State entitled in all cases

to the escheat or custodial taking of the intangibles, or, that the State of destination is entitled in all cases to the escheat or custodial taking of the intangibles, there is such controversy between the State of origin and the State of destination of the telegraphic money orders.

While the instant proceeding concerns only telegraphic money orders as to which Pennsylvania was the State of origin, the controversy relates to the entire sum of over $1,500,000.00 held by Western Union on account of money orders purchased from it on or before December 31, 1962.

Since, under the laws of the State of Pennsylvania, the State of origin, the sender is the creditor, and under the laws of Florida, Oregon and Virginia, the sendee or the payee of a draft is the creditor, and there is an impasse as to the identity of the creditor, New York claims that, as the State in which Western Union was incorporated, it is entitled to the said intangibles, under the rule in *Texas v. New Jersey*, supra.

Where one State asserts that under its laws the sender is the creditor, and that under its own laws it is, as the State of the sender, entitled to the escheat or custodial taking of the intangibles, and another State asserts that under its laws the sendee is the creditor, and that under its laws it is the State entitled to the escheat or custodial taking of the intangibles, when the address of the sendee is in that State —so that the States come to different conclusions, under their respective laws as to the identity of the

creditor and the right of escheat or custody—the rule enunciated in *Texas v. New Jersey,* supra (that the State of the last known address of the creditor, as shown by the debtor's books and records, has the primary right to the escheat or custodial taking of the intangibles), cannot be applied.

Quoting again from "Recommendations Relating to Escheat", submitted by the California Law Revision Commission to the Governor of California:

> "The opinion in Texas v. New Jersey indicates that the creditor was identified in each instance . . . Thus, the Supreme Court did not have before it the problems that arise from uncashed travelers checks and money orders. Consequently, the rules formulated by the Court do not adequately cover these problems.
>
> "It usually is impossible to apply literally to such instruments the basic rule stated in Texas v. New Jersey (escheat to the State of obligee's last known address, as shown on the obligor's records)."

Yet equity and fairness dictate that a rule be adopted which will give the primary right to one of these two States, because only by such rule can escheat be distributed among the States "in the proportion of the commercial activities of their residents". *Texas v. New Jersey,* supra.

A rule which gives the primary right of escheat or custody to the State of origin might seem to take the right away from a State which, under its own laws, claims such right as the State of destination, but this

will be substantially compensated for by giving the latter State the unclaimed moneys arising from telegraphic money orders as to which it was the State of origin, although, under its own laws, but for the rule, it would have no such right as the State of origin. Conversely, of course, a rule which would give the primary right of escheat or custody to the State of destination might seem to take the right away from a State which, under its own laws, claims such right as the State of origin, but again, this would be substantially compensated for by giving it the unclaimed moneys as to which it is the State of destination, although, under its own laws, but for the rule, it would have no such right as the State of destination.

Either of these two rules would be equitable to all the States, and would distribute escheats among the States in the proportion of the commercial activities of their residents. However, a rule giving the primary right to the State of origin is more in accord with the nature of telegraphic money orders, the contractual provisions thereof, the surrounding circumstances and the events following the purchase of telegraphic money orders.

The telegraphic money order is purchased in the State of origin, and the contract between the sender and Western Union is made there. The company is paid there for its services, and the moneys involved are deposited there with the company. The moneys deposited with Western Union are not sent out of that State, but are mingled there with other funds of the company. Under the terms of the telegraphic money order, if payment to the sendee is not effected

within 72 hours or other specified period, the money order is canceled, and the office of origin, in the State of origin, is notified to make refund to the sender.

The survey made by Western Union of more than 17,000 telegraphic money orders as to which Western Union still holds the amount deposited shows that in 78.1% thereof there was not even the issuance of a draft, and the money orders were canceled, leaving in effect only the duty of the company to refund the money to the sender in the State of origin. It is reasonable to assume that at least one-half of these drafts were to sendees in the State of origin.

Therefore, close to 90% of the unclaimed moneys held by Western Union represents moneys to which the sender in the State of origin is entitled, and the rule suggested would return the moneys held by Western Union to the State in which it was received, and in which every essential element of the transaction took place.

As to drafts, the effect thereof must be determined either by the laws of the State of origin, where the contract was entered into by the company and the sender of the money order, or by the laws of the State in which the draft was issued. Under the laws of Pennsylvania and a number of other States, a draft is not payment if it itself is not paid, unless it has been expressly accepted as payment. Other States hold the contrary view, that the delivery of a draft constitutes payment, unless payment of the draft itself is refused. See 70 *C.J.S.*, Title, "Payment", Sec. 23a, 104a.

A rule giving the right of escheat or custodial taking to the State of origin of the telegraphic money order will be in conformity with the aim expressed in *Texas v. New Jersey,* supra, to distribute escheats among the States "in the proportion of the commercial activities of their residents", even if a draft was issued in the State of destination. Whatever escheats will be denied to the State in which the drafts were issued will be compensated for by granting the right of escheat or custodial taking to such States where it was the State of origin and no drafts were issued there to the sendees.

Like the rule in *Texas v. New Jersey,* the suggested rule "involves a factual issue simple and easy to resolve and leaves no legal issue to decide". There will be no need to attempt to reconcile or choose between the laws of the State of origin and the State of destination for the determination of the identity of the delivery of a draft by Western Union.

Furthermore, since the records of Western Union show the State of origin of every money order, the rule will, without exception, cover every item as to which Western Union holds the unclaimed moneys and no State will be deprived of its fair share by a mere failure of Western Union to obtain an address of the sender or sendee.

A rule based upon the addresses of the sender or sendee would not have such complete application, because in many instances Western Union never obtained such addresses (Complaint, Par. 14).

Again, a rule which would give the right of escheat or custody to the last known address of the payee of

a draft would affect only 21.9% of the items involved, and would require a different rule as to the 78.1% for which drafts were not issued. The rule that the State of origin of a telegraphic money order is the only State entitled will not require such a second rule.

Since the suggested rule will return the moneys to the State in which Western Union received it, the persons who deposited the moneys with Western Union will in most cases find it more convenient if they later claim their money, to present and pursue their claims in the same State in which they deposited the moneys with Western Union.

While New York has amended Sec. 1309 of the Abandoned Property Law to provide one rule for money orders purchased before January 1, 1958, and another rule for money orders purchased on and after that date, there is no need for such a differentiation, and the suggested rule is equally applicable to telegraphic money orders issued before or after January 1, 1958.

CONCLUSION

Every consideration taken into account by this Court in formulating the rule adopted in *Texas v. New Jersey* applies with equal force to the above suggested rule.

1. As stated above, the suggested rule involves a factual issue, simple and easy to resolve, leaving no legal issue to be decided;

2. It tends to distribute the unclaimed moneys among the States in proportion to the purchase of telegraphic money orders in the States;

3. It is conducive to needed certainty;

4. It dispenses with technical concepts, such as definition of a "creditor" or "payment";

5. Administration and application of escheat and custodial laws will be simplified;

6. It is a rule to which all States may refer with confidence;

7. It is fair and equitable.

It is submitted that the suggested rule giving the sole right of escheat or custody to the State of origin of a telegraphic money order, when the amount thereof is unclaimed, is a rule which is consistent with the guides followed by this Court in *Texas v. New Jersey.*

Respectfully submitted,

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APPENDIX

PENNSYLVANIA ACT OF MAY 2, 1889, P. L. 66, Sec. 1, as amended by Act of July 29, 1953, P. L. 986, Sec. 1, 27 P.S. 333

"Whenever the . . . person entitled to any . . . personal property within or subject to the control of the Commonwealth, or has been or shall be and remain unknown for the period of seven successive years, such . . . personal property . . . shall escheat to the Commonwealth . . ."

"Whenever any . . . personal property within or subject to the control of the Commonwealth has been or shall be and remain unclaimed for the period of seven successive years, such . . . personal property shall escheat to the Commonwealth."

PENNSYLVANIA FISCAL CODE, ACT OF APRIL 9, 1929, P. L. 343, Section 1310, 72 P.S. 1310

"Whenever any person, firm, association, bank, trust company or other corporation whatsoever, shall hold or be possessed of any items of money or property which are or shall be escheatable by any Act of General Assembly, the Department of Revenue may . . . suggest to the Attorney General that, instead of proceeding for the escheat of such items . . . the At-

torney General apply, by petition, for an order . . . directing the payment of the same into the State Treasury to the credit of the Commonwealth . . . all amounts so paid to be subject to being refunded by petition to the Board of Finance and Revenue."

McKINNEY'S CONSOLIDATED NEWS
OF NEW YORK
ANNOTATED
BOOK 2½

ABANDONED PROPERTY LAW
Sec. 1309

As amended L 1969, c. 1114, Sec. 1-5
effective May 26, 1969

§1309. Uncashed travelers checks and money orders

1. Any amount held or owing by any organization other than a banking organization for the payment of a travelers check on which such organization is directly liable, sold by such organization on or after January first, nineteen hundred thirty, shall be deemed abandoned property if such amount is held or owing for payment of a travelers check which shall have been outstanding for more than fifteen years from the date of its sale.

2. Any amount held or owing by any such organization for the payment of a money order, or for the payment of any instrument drawn or issued to effect the payment thereof, sold by such organization on or after January first, nineteen hundred thirty and prior to January first, nineteen hundred fifty-eight shall be

deemed abandoned property when such amount has remained unpaid to the rightful owner thereof for seven years.

3. Any amount held or owing by any such organization for the payment of such money order, or any instrument drawn or issued to effect the payment thereof, sold by such organization on or after January first, ninteen hundred fifty-eight shall be deemed abandoned property when such amount has remained unpaid to the rightful owner thereof for seven years, and either

(a) the last known address of the purchaser of such money order according to the records of such organization is located within this state and no instrument has been drawn or issued to effect the payment thereof, or

(b) such address is located within this state and an instrument has been drawn or issued to effect such payment, or

(c) such address cannot be obtained from the records of such organization and an instrument to effect such payment has been drawn or issued in this state, or

(d) such address cannot be obtained from the records of such organization and no instrument to effect such payment has been drawn or issued.

4. On or before the first day of June in each year commencing with the year nineteen hundred forty-nine every such organization shall pay to the state comptroller all property deemed abandoned pursuant

to this section. Such payment shall be accompanied by a statement setting forth such information as the state comptroller may require.

5. Notwithstanding any other provision of law, the rights of a holder of a travelers check or money order to payment from any such organization shall be in no wise affected, impaired or enlarged by reason of the provisions of this section or by reason of the payment to the state comptroller of abandoned property hereunder, and any such organization which has paid to the state comptroller abandoned property held or owing for the payment of a travelers check or money order shall, upon making payment to the person appearing to its satisfaction to be entitled thereto and upon submitting to the state comptroller proof of such payment and the identifying number of the travelers check or money order so paid, be entitled to claim reimbursement from the state comptroller of the amounts so paid, and after audit the state comptroller shall pay the same.

SUPREME COURT, U. S.

MAY 7 1970

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1969
No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,

Defendants.

BRIEF ON BEHALF OF THE STATE OF NEW YORK IN RESPONSE TO MOTION TO FILE COMPLAINT

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Statement

This brief is in response to the Motion by the Commonwealth of Pennsylvania for Leave to File a Complaint against the States of New York, Florida, Oregon and Virginia and the Western Union Telegraph Company, a New York corporation.

The purpose of this brief is to indicate to this Court that this is a proper case for the exercise of original jurisdiction by this Court and to that extent the State of New York supports the motion of the Commonwealth of Pennsylvania.

Jurisdiction

The original jurisdiction of this Court is invoked under Article III, Section 2 of the Constitution of the United States and United States Code, Title 28, Section 1251(a)(1) and (b)(3).

Questions Presented

1. Should this Court exercise original jurisdiction in a controversy between the several states respecting their rights to unclaimed and abandoned property arising from money orders?

2. Does *Texas* v. *New Jersey*, 379 U. S. 674 (1965) determine that, in the situation here presented, where the last known address of the creditor is unknown or unobtainable from the records of the debtor corporation, the state of domicile of the corporation is entitled to this abandoned property?

3. Should any other rule be adopted, with relation to unclaimed and abandoned money orders, so as to permit any other state, such as the state of origin or the state of destination of the money orders, to take this abandoned property?

Statement of the Case

The complaint of the Commonwealth of Pennsylvania seeks a determination that under its statutes relating to escheat and custody of intangibles, it is entitled to the unclaimed and abandoned property arising out of money orders purchased in Pennsylvania.

New York claims that as to money orders purchased anywhere, subsequent to January 1, 1930 and prior to

January 1, 1958 this abandoned property should be paid to the State of New York as the state of corporate domicile, the state of the central focus of management of Western Union and the location of the corporate comptroller or treasurer to whom surplus funds of the offices throughout the country are ultimately remitted. As to any money orders purchased on or after January 1, 1958, New York claims to be entitled to such abandoned property if the last known address of the purchaser of the money order, as shown by the records of Western Union, is within the State of New York and New York makes a similar claim with reference to January 1, 1958 or subsequent money orders if the last known address of the purchaser cannot be obtained from the records of Western Union.

The pertinent section of the New York Abandoned Property Law (§ 1309) was amended in 1969 as a result of several years of discussions among various states as to the possibility of disposing of these claims without legal action.[1] The separation point of January 1, 1958, which is set out in the amendment, stems from the use of a convenient date closest to the determination in *Texas* v. *New* Jersey, 379 U. S. 674 (1965) after giving effect to a seven year dormancy period contained in the statutes of several of the states, including New York and Pennsylvania.

The Pennsylvania complaint also alleges that the states of Florida, Oregon and Virginia claim to be entitled to abandoned money order property if the sendee of the money orders were residents of those states or had last known addresses in those states. There are additional variations of these claims based upon whether or not a money order draft was issued.

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[1] See appendix for New York Abandoned Property Law, § 1309, as it existed prior to amendment, effective May 26, 1969, and as amended effective that date.

Summary of Argument

Since it appears that, despite every effort by New York, the controversy cannot be resolved, this is an appropriate case for the exercise of original jurisdiction by this Court. The motion of the Commonwealth of Pennsylvania, insofar as it relates to its application for leave to file its complaint, should be granted.

Argument

We do not deem it appropriate, at this stage, to argue the relative merits of the claims of New York as against the claims of Pennsylvania or any other state. Nor do we feel it appropriate, at this time, to contravene any of the allegations of the complaint or statements of fact made in the Pennsylvania brief in support of its motion. Since this is the function of a pleading, we are proceeding upon the assumption that adequate time will be allowed for the submission of an answer by New York, if and when the Court grants this application.

This is a controversy between several states, which years of negotiation have failed to solve. For this reason we support the motion of Pennsylvania insofar as it requests this Court to exercise its original jurisdiction in this matter. In view of the complex factual and legal questions involved, we also join in the request of Pennsylvania, in its complaint, that at the proper stage in these proceedings this matter be referred to a Special Master or Federal District Court to take evidence and make appropriate reports.

A different aspect of this matter was before this Court in *Western Union Telegraph Co.* v. *Pennsylvania,* 368 U. S. 71 (1961). There this Court referred to the multi-state claims that had been made to escheat the same abandoned

property held by Western Union. It pointed to the provisions of Article III § 2 of the Constitution which give this Court original jurisdiction of cases involving controversies between states and said (p. 77), "The situation here is in all material respects like that which caused us to take jurisdiction in *Texas* v. *Florida*, 306 U. S. 398". Later in its opinion this Court also said (p. 80):

> "Nor need we, at this time, attempt to decide the difficult legal questions presented when many different States claim power to escheat intangibles involved in transactions taking place in part in many states. It will be time enough to consider those complicated problems when all interested States—along with all other claimants—can be afforded a full hearing and a final, authoritative determination."

In *Texas* v. *New Jersey*, 379 U. S. 674 (1965), this Court, in pursuance of its holding in the *Western Union* case, *supra*, took original jurisdiction over a controversy resulting from multi-state claims to escheat the same property. The Court adopted the following rules respecting the rights of states to abandoned property (pp. 681-682 and 380 U. S. 518 [final decree]): (1) The property is subject to escheat or custodial taking by the State of last known address of the person entitled thereto, as shown on the books and records of the debtor, to the extent of that State's power under its own law to escheat or take custodially; (2) Where there is no address of the person entitled thereto on the books and records of the debtor, the property is subject to escheat or custodial taking by the state of incorporation of the debtor, subject to the right of any other state to recover such property upon proof that the last known address of the creditor was within that other State's borders and; (3) Where the state of last known address as shown on the books and records of the debtor does not have laws providing for escheat of such property, the state of corporate domicile takes, subject to

the right of the state of last known address to recover the property if and when it enacts provisions for escheat or custodial taking.

Assuming that the rationale of *Texas* v. *New Jersey, supra,* applies to a situation involving repeated multi-state and multi-phased operations and contacts, the difficulty of ascertaining the identity of the creditor becomes a paramount problem. It is entirely consistent for New York to argue, as we do, that in these circumstances the second rule should be applied, since there appears to be no reasonably certain way of determining from the books and records of Western Union who the creditor is, much less the state of his last known address. Under these conditions, this abandoned property should be paid to New York as the state of corporate domicile and as the focus of its management. But New York, as a result of continuing discussions over the years with a number of other states, decided to adopt a rule of custodial taking which would reconcile the second rule adopted by this Court with our view that if the *Texas* v. *New Jersey* rationale applied, it should not have retroactive application. It would also deal with the practically insoluble problem of determining the identity of the creditor and his last known address. In participating in the discussions with the other states, New York was particularly aware of the rationale and purpose of this Court, as stated in *Texas* v. *New Jersey, supra,* at page 679:

> "The uncertainty of any test which would require us in effect either to decide each escheat case on the basis of its particular facts or to devise new rules of law to apply to ever-developing new categories of facts, might in the end create so much uncertainty and threaten so much expensive litigation that the States might find that they would lose more in litigation expenses than they might gain in escheats."

It was for these reasons that New York amended the Abandoned Property Law § 1309 in 1969. By that amendment, as to money orders purchased prior to January 1, 1958, New York, the state of corporate domicile would be entitled to take custodially. As to money orders purchased thereafter, if New York is the state of last known address of the purchaser as shown on the debtor's books and records, it would take custodially and New York would also take such abandoned property custodially if the last known address of the purchaser could not be obtained from the records of the debtor corporation.

The emphasis on the term "custodially" is deliberate. The public policy of the State of New York, as expressed in Abandoned Property Law § 102, is to utilize abandoned property for the benefit of the people of the State, "while protecting the interest of the owners thereof". Section 1309(5), in like manner, provides that the rights of a holder of a money order, "shall be in no wise affected, impaired or enlarged" by reason of the payment to the state comptroller of abandoned property.

We note that in the complaint of the Commonwealth of Pennsylvania it is requested that a temporary injunction be issued, restraining New York from proceeding with any action now pending, or from instituting any action to escheat or take custody of the property involved in this proceeding, pending further orders of this Court. There is no need for such request. Over the long period of negotiations between the states, New York did not and does not intend to institute any such action until disposition of the conroversy.

As noted above, we have not otherwise commented on the rule suggested by Pennsylvania or the rule which may be espoused by the other states, encompassed within the third question presented, concerning the right of the state of last known address of the purchaser of the money order

or of the sendee to take this abandoned property. It is our view that the time and place for such argument is after development of the complex facts upon trial of the issues raised by all the pleadings.

CONCLUSION

Accordingly, we support the motion of Pennsylvania insofar as it asks for leave to file its complaint. We respectfully request that an order be entered to that effect which also grants the State of New York an appropriate period of time to file its answer.

Dated: New York, New York, April 30, 1970.

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Respondent,
the State of New York

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

JULIUS GREENFIELD
Assistant Attorney General
of Counsel

APPENDIX

McKinney's Consolidated Laws
of New York
Annotated
Book 21/2

Abandoned Property Law

Sec. 1309

As it existed prior to Amendment
by Law 1969, c. 1114
effective May 26, 1969

§ 1309. Uncashed travelers checks and money orders

1. Any amount held or owing by any organization other than a banking organization for the payment of a travelers check or money order on which such organization is directly liable, sold by such organization on or after January first, nineteen hundred thirty, shall be deemed abandoned property if such amount is held or owing (a) for payment of a travelers check which shall have been outstanding for more than fifteen years from the date of its sale, or (b) for payment of a money order which shall have been outstanding for more than seven years from the date of its sale.

2. On or before the first day of May in each year commencing with the year nineteen hundred forty-nine every such organization holding or owing such abandoned property shall make a verified written report to the state comptroller of all such abandoned property held or owing by it as of the thirty-first day of December next preceding. Such report shall set forth the amount and identifying number of each travelers check and money order for the payment of which such abandoned property is held or owing.

3. On or before the first day of June in each year commencing with the year nineteen hundred forty-nine every such organization shall pay to the state comptroller all abandoned property specified in its report of that year, excepting such abandoned property as shall have ceased to be abandoned since the date as of which such report was prepared. Such payment to the state comptroller shall be accompanied by a statement setting forth such information as the state comptroller may require relative to such abandoned property as shall have ceased to be abandoned.

4. Notwithstanding any other provision of law, the rights of a holder of a travelers check or money order to payment from any such organization shall be in no wise affected, impaired or enlarged by reason of the provisions of this section or by reason of the payment to the state comptroller of abandoned property hereunder, and any such organization which has paid to the state comptroller abandoned property held or owing for the payment of a travelers check or money order shall, upon making payment to the person appearing to its satisfaction to be entitled thereto and upon submitting to the state comptroller proof of such payment and the identifying number of the travelers check or money order so paid, be entitled to claim reimbursement from the state comptroller of the amount so paid, and after audit the state comptroller shall pay the same.

ABANDONED PROPERTY LAW

Sec. 1309

As Amended by Laws of 1969, c. 1114
effective May 26, 1969

§ 1309. Uncashed Travelers checks and money orders

1. Any amount held or owing by any organization other than a banking organization for the payment of a trav-

elers check on which such organization is directly liable, sold by such organization on or after January first, nineteen hundred thirty, shall be deemed abandoned property if such amount is held or owing for payment of a travelers check which shall have been outstanding for more than fifteen years from the date of its sale.

2. Any amount held or owing by any such organization for the payment of a money order, or for the payment of any instrument drawn or issued to effect the payment thereof, sold by such organization on or after January first, nineteen hundred thirty and prior to January first, nineteen hundred fifty-eight shall be deemed abandoned property when such amount has remained unpaid to the rightful owner thereof for seven years.

3. Any amount held or owing by any such organization for the payment of such money order, or any instrument drawn or issued to effect the payment thereof, sold by such organization on or after January first, nineteen hundred fifty-eight shall be deemed abandoned property when such amount has remained unpaid to the rightful owner thereof for seven years, and either

(a) the last known address of the purchaser of such money order according to the records of such organization is located within this state and no instrument has been drawn or issued to effect the payment thereof, or

(b) such address is located within this state and an instrument has been drawn or issued to effect such payment, or

(c) such address cannot be obtained from the records of such organization and an instrument to effect such payment has been drawn or issued in this state, or

(d) such address cannot be obtained from the records of such organization and no instrument to effect such payment has been drawn or issued.

4. On or before the first day of June in each year commencing with the year nineteen hundred forty-nine every such organization shall pay to the state comptroller all property deemed abandoned pursuant to this section. Such payment shall be accompanied by a statement setting forth such information as the state comptroller may require.

5. Notwithstanding any other provision of law, the rights of a holder of a travelers check or money order to payment from any such organization shall be in no wise affected, impaired or enlarged by reason of the provisions of this section or by reason of the payment to the state comptroller of abandoned property hereunder, and any such organization which has paid to the state comptroller abandoned property held or owing for the payment of a travelers check or money order shall, upon making payment to the person appearing to its satisfaction to be entitled thereto and upon submitting to the state comptroller proof of such payment and the identifying number of the travelers check or money order so paid, be entitled to claim reimbursement from the state comptroller of the amounts so paid, and after audit the state comptroller shall pay the same.

SUPREME COURT, U. S.

AUG 6 1970

E. ROB[illegible]EAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

NO. 40 ORIGINAL

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff

vs.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,
Defendants

MOTION OF THE STATE OF CONNECTICUT FOR LEAVE TO INTERVENE AS A PARTY PLAINTIFF

ROBERT K. KILLIAN
Attorney General
State of Connecticut

F. MICHAEL AHERN
Assistant Attorney General
Attorneys for the
State of Connecticut

IN THE

Supreme Court of the United States

ORIGINAL ACTION NO. 40

OCTOBER TERM, 1969

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,
Defendants

MOTION OF THE STATE OF CONNECTICUT FOR LEAVE TO INTERVENE AS A PARTY PLAINTIFF

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

The State of Connecticut respectfully represents as follows:

1. On or about March 30, 1970, the Commonwealth of Pennsylvania filed a Motion for Leave to File Complaint in the above Original Action, together with a copy of the proposed Complaint.

2. By the said Complaint the plaintiff averred, inter alia, as follows:

That the Western Union Telegraph Company, defendant, is a New York corporation, and that as part of its business it is engaged in the telegraphic money order business;

That in such telegraphic money order business the company receives moneys from purchasers of telegraphic money orders in one State for transmission of the amount of the money orders to other persons, either in the same State or in other States;

That by the terms of the telegraphic money orders, it is provided that if payment of the amount of the telegraphic money order is not effected within the time therein specified (in most cases 72 hours, or other cases 5 days or 10 days) the telegraphic money order will be cancelled, and the moneys returned to the sender of the telegraphic money order;

That in many cases, payment has not been effected within the time specified;

That in approximately 20% of the cases in which payment has not been effected, the company issued its draft for the amount of the telegraphic money order, either to the sendee, the person to whom the telegraphic money order was destined, or to the sender of the telegraphic money order, but that such drafts, whether issued to the sendee for the amount of the telegraphic money order, or to the sender for the amount to be returned to him, have not been presented or paid;

That in 80% of the cases in which the payment to the sendee of the amount of the telegraphic money was not effected and the telegraphic money order was cancelled and Western Union was unable to make refund to the sender of the telegraphic money order, and that in such 80%, no drafts were issued either to sendee or to sender;

That Western Union holds approximately $1,500,000.00 received by it for telegraphic money orders issued by the

company prior to December 31, 1962, as to which payment to the sendee has not been effected and refund has not been made to the sender;

That of the said sum of approximately $1,500,000.00 so held by Western Union approximately $100,000.00 was received by Western Union for telegraphic money orders issued by the company to purchasers in Pennsylvania;

That under the laws of the Commonwealth of Pennsylvania, the persons entitled to the money held by Western Union on account of telegraphic money orders purchased in Pennsylvania are the senders of the money orders;

That under the laws of the Commonwealth of Pennsylvania, where such moneys received by Western Union for telegraphic money orders issued to purchasers in Pennsylvania have been unclaimed, or the whereabouts of the persons entitled have been unknown for the period of seven years, the said moneys are subject to escheat or custodial taking by the Commonwealth of Pennsylvania;

That the said sum of approximately $100,000.00 so held by Western Union on account of money orders purchased in Pennsylvania has been unclaimed or the whereabouts of the persons entitled have been unknown for the period of seven years;

That the Commonwealth of Pennsylvania claims that it is entitled to the escheat or custody of the said sum of approximately $100,000.00 held by Western Union, as aforesaid;

That the State of New York, defendant, claims that as the State of Domicile of the obligor, Western Union, it is the State entitled to the escheat or custody of the entire sum of approximately $1,500,000.00 held by Western Union as aforesaid;

That there is therefore a controversy between Pennsylvania and New York as to the sum of approximately $100,000.00 held by Western Union, as aforesaid;

That as to the said sum of $100,000.00 received by Western Union for money orders issued by Western Union for money orders purchased in Pennsylvania, other States claim the right to the escheat or custody of such portions thereof as were destined to sendees in such other States, or as to which drafts were issued to the sendees in such other States;

That as to such portions of the sum of $100,000.00 held by Western Union arising out of telegraphic money orders issued to purchasers in Pennsylvania and destined to sendees in other States there is a controversy not only between Pennsylvania and New York, but also between such five States and the State to which the telegraphic money orders were destined;

That a similar controversy or controversies may exist as other portions of the said sum of $1,500,000.00 held by Western Union arising out of telegraphic money orders issued by Western Union to purchasers in States other than Pennsylvania;

That it is necessary that a rule be declared determining which of the several States has the paramount right to the escheat or custody of the money so held by Western Union;

That Pennsylvania believes that the rule which is fair and equitable and most consonant with the nature of telegraphic money order transactions, is that the State in which the telegraphic money order was issued is the State which has such paramount right.

3. That the State of Connecticut is a party in interest, because many telegraphic money orders issued by Western Union have been issued to purchasers in this State, and Western Union holds moneys received for telegraphic money orders issued by Western Union to purchasers in this State or to which payment has not been effected, and the moneys received by Western Union for such telegraphic money orders have been unclaimed and upon information and belief total approximately $100,000.00.

4. That the State of Connecticut believes that the rule submitted by the Commonwealth of Pennsylvania — that the State in which telegraphic money orders have been issued by Western Union to purchasers in the State entitled to the escheat or custody of the unclaimed amounts held by Western Union on account of such telegraphic money orders — is fair and equitable.

WHEREFORE the State of Connecticut prays that its Motion to Intervene as a party plaintiff in the within proceedings and to file a Complaint herein be granted.

ROBERT K. KILLIAN
Attorney General
State of Connecticut

F. MICHAEL AHERN
Assistant Attorney General
Attorneys for the
State of Connecticut
30 Trinity Street
Hartford, Connecticut

July 27, 1970

SUPREME COURT, U. S.

AUG 12 1970

ROBERT SEAVER, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,

Defendants.

ANSWER ON BEHALF OF THE STATE OF OREGON

LEE JOHNSON
Attorney General of Oregon

PETER S. HERMAN
Senior Counsel

JACOB TANZER
Solicitor General
Attorneys for Defendant, State of Oregon

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In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,

Defendants.

ANSWER

COMES NOW defendant State of Oregon, and answering Plaintiff's complaint, admits, denies and alleges as follows:

I.

Answers I thereof as follows:

1. Admits subparagraph 1, 2, 3 and 4.

2. Answering subparagraph 5, alleges that the State of Oregon has an interest in the matter in controversy herein.

3. Answering subparagraph 6, alleges that Western Union does business within the State of Oregon and is authorized by law to do so.

II.

Answers II thereof as follows:

1. Admits all allegations thereof.

III.

Answers III as follows:

1. Admits that in many instances where money orders have been cancelled, Western Union has been unable to make refund to the senders; that in many instances drafts have been issued to sendees but have not been presented for payment. This defendant has insufficient information to either admit or deny the specific percentages alleged, but asserts that such specific percentages are not essential to the determination of the issues of this suit.

IV.

Answers IV thereof as follows:

1. Admits subparagraphs 17, 22, 23, 24, 26, 27, 28, 29, 30, 33 and 35.

2. Answering subparagraphs 18, 19 and 20, admits as follows:

(a) Western Union is holding funds representing unpaid and unrefunded money orders purchased on or before December 31, 1962.

(b) A portion of the funds so held by Western Union is on account of money orders purchased in the State of Pennsylvania.

(c) Funds so held by Western Union have been unclaimed for a period in excess of 7 years.

3. Answering subparagraph 21, admits that under the laws of Pennsylvania, such sum may be subject to escheat to that state, but affirmatively alleges that if any portion of said sum represents money orders for which drafts have been issued to sendees within the State of Oregon but which have not been presented for payment,

the sums represented thereby are subject to escheat to the State of Oregon under Oregon law as abandoned property.

4. Answering subparagraph 25, this defendant alleges:

(a) Where a draft has been issued to a sendee in Oregon, but is not presented for payment for a period exceeding 7 years, the fund is presumed to be abandoned and Oregon claims the same.

(b) Where money is wired from another state, and Oregon is the state of destination, if a draft is not issued and the money order is cancelled because of inability to locate the sendee, Oregon makes no claim to the funds, even though refund is not made to the sender for in excess of 7 years.

(c) If a money order is purchased in the State of Oregon for destination to another state, but a draft is not issued and the money order is cancelled due to inability to locate the sendee, Oregon claims the sum represented thereby if the sender cannot be located and refund made within seven years.

(d) If a money order is purchased in the State of Oregon for destination to another state, and a draft is issued to the sendee but not presented for payment for 7 years, Oregon makes no claim to the sum represented thereby.

(e) Where a money order is purchased within the state and the sendee is also in the state, if the sum represented thereby is unpaid or unrefunded for a period in excess of 7 years, Oregon makes claim thereto.

The statutory provision of Oregon law under which

Oregon makes claim under (a) (c) and (e) above, is ORS 98.342 which provides as follows:

> "All intangible personal property, not otherwise covered by this Act, including any income or increment thereon and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than seven years after it became payable or distributable is presumed abandoned."

By virtue of the provisions of ORS 98.342, Oregon claims that funds represented by (a) (c) and (e) above are owing within the State of Oregon.

5. Answering subparagraph 31, admits the same except asserts that it has insufficient information to admit or deny the amounts alleged.

6. Answering subparagraph 34, admits the allegations thereof, and alleges that the State of Oregon is subject to irreparable injury and loss of property unless the issues of this suit are determined by this Court.

WHEREFORE, having answered the complaint, defendant State of Oregon prays that judgment be entered directing Western Union to distribute to the State of Oregon all funds held by Western Union under the following circumstances:

1. All sums represented by drafts which have been issued to a sendee in Oregon but which have not been presented for payment for in excess of seven years.

2. All sums represented by money orders purchased in Oregon for destination to another state, but which have been cancelled because of inability to locate the

sendee, and the sender has not been located and refund made for in excess of seven years.

3. All sums unclaimed and unrefunded for a period in excess of seven years where the money order has been purchased within Oregon for a sendee also in Oregon.

For such other relief as the Court may deem just.

LEE JOHNSON
Attorney General of Oregon

JACOB TANZER
Solicitor General
Attorney for the State of Oregon

Proof of Service

In the

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1969

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,

Defendants.

PROOF OF SERVICE

I, JACOB TANZER, Solicitor General of the State of Oregon, hereby certify that I am one of the attorneys for the defendant, State of Oregon, that I am a member of the Bar of the Supreme Court of the United States, and that on the day of , 1970, I served copies of the foregoing Answer, on each of the following parties by depositing such copies, air mail postage prepaid, in a United States Post Office, addressed as follows:

1. State of New York
   (a) Hon. Nelson A. Rockefeller
   Governor of the State of New York
   Albany, N. Y.
   (b) Louis J. Lefkowitz
   Attorney General of the State of New York

Proof of Service

2. State of Florida

   (a) Hon. Claude R. Kirk, Jr.
   Governor of the State of Florida
   Tallahassee, Fla.

   (b) Hon. Earl Faircloth
   Attorney General of the State of Florida
   Tallahassee, Fla.

3. Commonwealth of Virginia

   (a) Hon. Mills E. Goodwin, Jr.
   Governor of the Commonwealth of Virginia
   Richmond, Va.

   (b) Hon. Robert Y. Button
   Attorney General of the Commonwealth
   of Virginia
   Richmond, Va.

4. The Western Union Telegraph Company

   (a) John M. Evans, Esq.
   Vice-President and General Counsel
   The Western Union Telegraph Company
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   New York, N. Y.

   (b) Peter F. Oates, Esq.
   Assistant General Counsel
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   New York, N. Y.

5. Commonwealth of Pennsylvania

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   Attorney General of Pennsylvania
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Proof of Service

(b) Joseph H. Resnick
Assistant Attorney General
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1500 Chestnut Street
Philadelphia, Pa. 19102

JACOB TANZER
Solicitor General
State of Oregon

SUPREME COURT, U. S.

AUG 13 1970

E. ROBERT SEAVER, CLERK

No. 40 ORIGINAL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

v.

STATE OF NEW YORK et al.,

Defendants.

ANSWER OF DEFENDANT THE WESTERN UNION TELEGRAPH COMPANY TO COMPLAINT OF THE COMMONWEALTH OF PENNSYLVANIA

JOHN M. EVANS,

HERBERT G. TELSEY,
60 Hudson Street,
New York, New York 10013,
Attorneys for Defendant
The Western Union Telegraph Company.

PETER F. OATES,
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 40 ORIGINAL

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

v.

STATE OF NEW YORK et al.,

Defendants.

ANSWER OF DEFENDANT THE WESTERN UNION TELEGRAPH COMPANY TO COMPLAINT OF THE COMMONWEALTH OF PENNSYLVANIA

Defendant The Western Union Telegraph Company, answering the complaint of the Commonwealth of Pennsylvania:

1. Avers that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the said complaint to the effect that the judgment prayed for herein will necessarily include an order directing this answering defendant to pay amounts received for telegraphic money orders, or a portion or portions thereof, to one or more States which are or may become parties to this action.

2. Denies the allegation contained in paragraph 6 of the said complaint to the effect that this answering defendant assumed the obligations of Postal Telegraph, Inc.; avers that on or about October 7, 1943, pursuant to an agreement

made solely with Postal Telegraph, Inc., a corporation theretofore organized and then existing under the laws of the State of Delaware, this answering defendant acquired substantially all the assets of, and assumed substantially all the liabilities—including those for unpaid telegraphic money orders—of all the subsidiaries of Postal Telegraph, Inc., which acquisition was a "consolidation or merger" as defined in Section 222(a)(1) of the Communications Act of 1934, as then amended; avers that among said subsidiaries of Postal Telegraph, Inc. were thirty-four operating companies, each of which provided telegraphic money order services to the public and each of which had been incorporated in a different State of the United States; avers, upon information and belief, that following said acquisition Postal Telegraph, Inc. and all its subsidiaries were, upon their own initiative, dissolved at various times and under the laws of the various States in which they had been incorporated; avers that said operating subsidiaries of Postal Telegraph, Inc. furnishing telegraphic money order services to the public as aforesaid were at all times both prior to the said acquisition and thereafter, and until their said dissolution, domiciled in thirty-four different States; and therefore further avers that the propriety of treating telegraphic money orders handled by said operating subsidiaries and involved in this action "as if they were originally Western Union telegraphic money orders" as in said paragraph 6 set forth, is a matter of law to be determined by this Court.

3. Denies the allegation contained in paragraph 9a of the said complaint to the effect that the terms and conditions set forth in the money order form ("Exhibit A" attached to the said complaint) are on file with the Interstate Commerce Commission ("I.C.C."); and avers that this defendant's money order terms and conditions were part of its tariff on file with said Commission from 1916 until 1934 but since then have been part of its tariff on file with the Federal Communications Commission.

4. Avers that the 1966 survey referred to in paragraph 16 of the said complaint was conducted by an outside firm retained for that purpose by this defendant; avers that a subsequent, more careful examination made by its own employees of material and records relating to a portion of the money order transactions examined in the said survey disclosed substantial inaccuracies therein; and therefore further avers that it lacks knowledge or information sufficient to form a belief as to the truth or substantial accuracy of the 1966 survey results set forth in percentages in paragraphs 16 and 30 of the said complaint.

5. Avers that it has never conducted any adequate study of available records relating to the amount of monies held by it on account of money orders purchased on or before December 31, 1962 from it or from operating subsidiaries of Postal Telegraph, Inc. referred to in paragraph 2 hereof; and therefore further avers that it lacks knowledge or information sufficient to form a belief as to the truth or substantial accuracy of the allegation contained in paragraph 18 of the said complaint to the effect that it still holds in excess of $1,500,000 on account of money orders described in said paragraph 18.

6. Avers that this answering defendant has never conducted any adequate study of available records relating to the amount of monies held by it on account of money orders purchased in Pennsylvania on or before December 31, 1962 from it or from any operating subsidiary of Postal Telegraph, Inc. referred to in paragraph 2 hereof, or so purchased anywhere on or before said date and destined to Pennsylvania; and therefore further avers that it lacks knowledge or information sufficient to form a belief as to the truth or substantial accuracy of the $100,000 amount set forth in paragraphs 19, 20, 21, 30 and 31 of the said complaint or of the $90,000 amount set forth in paragraph 31 of the said complaint.

7. Avers that whether any monies held by it on account of telegraphic money orders purchased in Pennsylvania on or before December 31, 1962 are subject to escheat or custodial taking by the plaintiff under its laws, as alleged in paragraph 21 of the said complaint, is a question of law to be determined by this Court.

8. Avers that it lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraphs 24, 25 and 26 of the said complaint.

9. Avers that it lacks knowledge or information sufficient to form a belief as to the truth of the below-quoted allegation, contained in the first sentence of paragraph 27 of the said complaint, to the effect that the claim of New York to all monies arising from money orders purchased from January 1, 1930 to January 1, 1958 is being made "without reference to any fact other than the purchase of the money order during such period".

10. Further answering the allegations contained in paragraph 30 of the said complaint:

(a) Denies that the controversy among States in said paragraph 30 described is (necessarily) limited to the States of origin, destination and corporate domicile, as in said paragraph 30 alleged, and avers that the State of last known address of the sender (if not one of the three States already mentioned) would or might be involved in such controversy; and

(b) Denies that determination of whether issuance of a draft constitutes payment of a money order or refund is (necessarily) involved in determining the powers or rights of the States of origin and destination to escheat or take custody of the monies involved, as in subparagraphs (1) and (2) of said paragraph 30 alleged.

11. Further answering the allegations contained in paragraph 31 of the said complaint, denies that the relative rights or powers of the States of origin and destination to escheat or take custody of the monies involved are (necessarily and in themselves) determinative of the absolute rights or powers of the plaintiff respecting money orders destined to Pennsylvania, as in said paragraph 31 alleged.

12. Avers that it lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph 32 of the said complaint, and avers further that whether Pennsylvania is entitled to the monies held by this answering defendant for the payment of telegraphic money order drafts issued to sendees or senders in Pennsylvania, under the circumstances stated in said paragraph 32, is a question of law for determination by this Court.

13. Except as hereinabove otherwise pleaded, admits the allegations of the said complaint.

WHEREFORE, this answering defendant joins in so much of the plaintiff's prayer as asks this Court to determine the controversies herein, and respectfully suggests that this Court refer the issues to a Master or District Court to hear the proofs and make such report and recommendations as to this Court may seem advisable.

JOHN M. EVANS,

HERBERT G. TELSEY,
Attorneys for Defendant
The Western Union Telegraph Company.

PETER F. OATES,
Of Counsel.

SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
AUG 14 1970
ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

October Term, 1970
No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,

Defendants.

ANSWER OF THE DEFENDANT, STATE OF NEW YORK

LOUIS J. LEFKOWITZ
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249 Press of Fremont Payne, Inc., 417 Canal St., N. Y.—966—6570

IN THE

Supreme Court of the United States

October Term, 1970
No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,

Defendants.

ANSWER OF THE DEFENDANT, STATE OF NEW YORK

The State of New York, by LOUIS J. LEFKOWITZ, Attorney General, makes answer to the complaint of the Commonwealth of Pennsylvania as follows:

1. Admits the allegations contained in paragraphs 1, 2, 3, and 4 of the said complaint.

2. Admits so much of paragraph 5 of the complaint as alleges that New York is asserting claims adverse to those of the Commonwealth of Pennsylvania but avers that it is without knowledge or information sufficient to form a belief that the other states named as defendants are the only states asserting rights contrary to the claims of Pennsylvania.

3. Is without knowledge or information sufficient to form a belief as to the allegations contained in the second paragraph of paragraph 6 of the complaint and demands proof of such allegations.

4. Admits the allegations of paragraphs 7 and 8 of the complaint.

5. Admits the allegations of paragraph 9 of the complaint but denies that portion of paragraph 9a of the complaint as alleges that Western Union tariffs are on file with tne Interstate Commerce Commission and avers that said tariffs are on file with the Federal Communications Commission.

6. Admits the allegations of paragraphs 10, 11, 12, 13, 14 and 15.

7. Admits so much of paragraph 16 as alleges that the survey therein referred to was made but avers that it lacks knowledge or information sufficient to form a belief as to the accuracy of the survey and the conclusions drawn therefrom by the plaintiff in the said paragraph 16 as well as in paragraph 30.

8. Admits the allegations of paragraph 17.

9. Is without knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 18, 19 and 20. Proof of such averments is demanded.

10. Denies so much of paragraph 21 as alleges that the sum of $100,000 is subject to escheat or custodial taking by Pennsylvania.

11. Admits the allegations of paragraphs 22 and 23.

12. Is without knowledge or information sufficient to form a belief as to the claims and controversies set forth in paragraphs 24, 25 and 26.

13. Denies so much of paragraph 27 as alleges that under the New York Abandoned Property Law, section 1309, New York claims all moneys arising from money orders purchased from Western Union between January 1, 1930 to January 1, 1958 solely by reason of the purchase of the money orders during such period and avers that New York, as the state of corporate domicile of Western Union, the state of central focus of management of Western Union and the situs of the office of the corporate comptroller and the treasurer to whom all surplus funds of the Western Union offices throughout the country are ultimately remitted is entitled to take this abandoned property. For further answer, paragraph 16 hereof, in answer to paragraphs 30, 31 and 32 of the complaint, is herein incorporated by reference.

14. Admits the allegations in paragraph 27 respecting New York's claims to money orders purchased from Western Union on or after January 1, 1958 and denies that Pennsylvania or any state other than New York has any right to any money order moneys where it is not feasible to determine the state of last known address of the creditor or the identity of the creditor from the books of Western Union. Copies of the New York Abandoned Property Law, section 1309, as it existed prior and subsequent to its amendments in 1969 and 1970 are attached hereto and made a part hereof as Exhibits A and B. For further answer, paragraph 16 hereof in answer to paragraphs 30, 31 and 32 of the complaint, is herein incorporated by reference.

15. Admits the allegations of paragraphs 28 and 29.

16. Further answering the allegations contained in paragraphs 30, 31 and 32 of the complaint:

(a) Avers that New York is entitled to take all such abandoned property arising out of money orders purchased from Western Union prior to January 1, 1958.

(b) Avers that New York is entitled to take all such abandoned property arising out of money orders purchased from Western Union on or after January 1, 1958 where: (1) New York is the state of last known address of the purchaser; (2) where the purchaser's last known address cannot be obtained from the records of Western Union; or (3) where the purchaser's last known address is located in a state not having in effect a statute under which such amount is payable to such state as unclaimed, abandoned or escheated property.

(c) Denies that any state other than New York has the right to take abandoned money order monies where it is not feasible to determine the last known address of the creditor from the books of Western Union.

(d) Avers that New York is entitled to take all such abandoned property arising out of money orders purchased from Western Union on or after January 1, 1958, where it is not feasible to determine the identity of the creditor from the books of Western Union.

17. Admits the allegations of paragraphs 33 and 35 and avers that the allegations of paragraph 34 contain conclusions of law to which no answer is required.

WHEREFORE, the State of New York joins in the plaintiff's request that this Court hear and determine the controversies herein, either by referring this case to a Special Master or Federal District Court, to take evidence and make appropriate reports and also prays as follows:

1. That plaintiff's request for the issuance of a temporary injunction against the State of New York be denied since New York has not and does not intend to institute any action until the disposition of this controversy.

2. That judgment be entered determining that the moneys held by Western Union are subject to custodial taking or escheat by the State of New York as follows:

a. New York is entitled to take all the moneys held by Western Union arising out of money orders purchased on or after January 1, 1930 and prior to January 1, 1958.

b. New York is entitled to take all the moneys held by Western Union arising out of money orders purchased on or after January 1, 1958 in the following circumstances:

(1) Where the last known address of the purchaser of the money order as shown on the records of Western Union is located in the state of New York;

(2) Where the last known address of the purchaser of the money order cannot be obtained from the records of Western Union and;

(3) Where the purchaser's last known address is located in a state not having in effect a statute under which such amount is payable to such state as unclaimed, abandoned or escheated property.

(4) Where it is not feasible to determine the identity or the last known address of the creditor from the books of Western Union.

3. That the State of New York be given such other and further relief as this Court may deem proper and appropriate in the circumstances.

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Exhibit A

McKinney's Consolidated Laws
of New York
Annotated
Book 2½

Abandoned Property Law

Sec. 1309

As it existed prior to Amendments by
Laws of 1969, c. 1114 effective
May 26, 1969 and by
Laws of 1970, c. 706 effective
May 12, 1970

§ 1309. Uncashed travelers checks and money orders

1. Any amount held or owing by any organization other than a banking organization for the payment of a travelers check or money order on which such organization is directly liable, sold by such organization on or after January first, nineteen hundred thirty, shall be deemed abandoned property if such amount is held or owing (a) for payment of a travelers check which shall have been outstanding for more than fifteen years from the date of its sale, or (b) for payment of a money order which shall have been outstanding for more than seven years from the date of its sale.

2. On or before the first day of May in each year commencing with the year nineteen hundred forty-nine every such organization holding or owing such abandoned property shall make a verified written report to the state comptroller of all such abandoned property held or owing by it as of the thirty-first day of December next preceding. Such report shall set forth the amount and identify-

ing number of each travelers check and money order for the payment of which such abandoned property is held or owing.

3. On or before the first day of June in each year commencing with the year nineteen hundred forty-nine every such organization shall pay to the state comptroller all abandoned property specified in its report of that year, excepting such abandoned property as shall have ceased to be abandoned since the date as of which such report was prepared. Such payment to the state comptroller shall be accompanied by a statement setting forth such information as the state comptroller may require relative to such abandoned property as shall have ceased to be abandoned.

4. Notwithstanding any other provision of law, the rights of a holder of a travelers check or money order to payment from any such organization shall be in no wise affected, impaired or enlarged by reason of the provisions of this section or by reason of the payment to the state comptroller of abandoned property hereunder, and any such organization which has paid to the state comptroller abandoned property held or owing for the payment of a travelers check or money order shall, upon making payment to the person appearing to its satisfaction to be entitled thereto and upon submitting to the state comptroller proof of such payment and the identifying number of the travelers check or money order so paid, be entitled to claim reimbursement from the state comptroller of the amount so paid, and after audit the state comptroller shall pay the same.

Exhibit B

ABANDONED PROPERTY LAW

Sec. 1309

As Amended by Laws of 1969, c. 1114
effective May 26, 1969 and
Laws of 1970, c. 706
effective May 12, 1970

§ 1309. Uncashed Travelers checks and money orders

1. Any amount held or owing by any organization other than a banking organization for the payment of a travelers check on which such organization is directly liable, sold by such organization on or after January first, nineteen hundred thirty, shall be deemed abandoned property if such amount is held or owing for payment of a travelers check which shall have been outstanding for more than fifteen years from the date of its sale.

2. Any amount held or owing by any such organization for the payment of a money order, or for the payment of any instrument drawn or issued to effect the payment thereof, sold by such organization on or after January first, nineteen hundred thirty and prior to January first, nineteen hundred fifty-eight shall be deemed abandoned property when such amount has remained unpaid to the rightful owner thereof for seven years.

3. Any amount held or owing by any such organization for the payment of such money order, or any instrument drawn or issued to effect the payment thereof, sold by such organization on or after January first, nineteen hundred fifty-eight shall be deemed abandoned property when such amount has remained unpaid to the rightful owner thereof for seven years, and either

(a) the last known address of the purchaser of such money order according to the records of such organization is located within this state and no instrument has been drawn or issued to effect the payment thereof, or

(b) such address is located within this state and an instrument has been drawn or issued to effect such payment, or

(c) such address cannot be obtained from the records of such organization and an instrument to effect such payment has been drawn or issued in this state, or

(d) such address cannot be obtained from the records of such organization and no instrument to effect such payment has been drawn or issued, or

(e) such address is located in a state not having in effect a statute under which such amount is payable to such state as unclaimed, abandoned or escheated property.

4. On or before the first day of June in each year commencing with the year nineteen hundred forty-nine every such organization shall pay to the state comptroller all property deemed abandoned pursuant to this section. Such payment shall be accompanied by a statement setting forth such information as the state comptroller may require.

5. Notwithstanding any other provision of law, the rights of a holder of a travelers check or money order to payment from any such organization shall be in no wise affected, impaired or enlarged by reason of the provisions of this section or by reason of the payment to the state comptroller of abandoned property hereunder, and any such organization which has paid to the state comptroller abandoned property held or owing for the payment of a

travelers check or money order shall, upon making payment to the person appearing to its satisfaction to be entitled thereto and upon submitting to the state comptroller proof of such payment and the identifying number of the travelers check or money order so paid, be entitled to claim reimbursement from the state comptroller of the amounts so paid, and after audit the state comptroller shall pay the same.

SUPREME COURT, U. S.

FILED

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E. ROBERT SEAVER, CLERK

Supreme Court of the United States

October Term, 1969

No. 40, Original

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff,

v.

STATE OF NEW YORK, ET AL.,
Defendants.

ANSWER OF THE COMMONWEALTH OF VIRGINIA

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August 11, 1970

Supreme Court of the United States

October Term, 1969

No. 40, Original

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff,

v.

STATE OF NEW YORK, ET AL.,
Defendants.

ANSWER OF THE COMMONWEALTH OF VIRGINIA

Now comes the Commonwealth of Virginia, one of the defendants herein, by and through her Attorney General, and in answer to the allegations contained in the numbered paragraphs of the plaintiff's complaint, answers and says:

1. The allegations of paragraph 1 of the complaint are admitted.

2. The allegations of paragraph 2 of the complaint are admitted.

3. The allegations of paragraph 3 of the complaint are admitted.

4. The allegations of paragraph 4 of the complaint are admitted.

5. For answer to paragraph 5 of the complaint, this defendant admits that it is asserting rights which are contrary to the claims of Pennsylvania.

6. The allegations of paragraph 6 of the complaint are admitted.

7. The allegations of paragraph 7 of the complaint are admitted.

8. The allegations of paragraph 8 of the complaint are admitted.

9. The allegations of paragraph 9 of the complaint are admitted.

10. The allegations of paragraph 10 of the complaint are admitted.

11. The allegations of paragraph 11 of the complaint are admitted.

12. The allegations of paragraph 12 of the complaint are admitted.

13. The allegations of paragraph 13 of the complaint are admitted.

14. The allegations of paragraph 14 of the complaint are admitted.

15. The allegations of paragraph 15 of the complaint are admitted.

16. The allegations of paragraph 16 of the complaint are admitted.

17. The allegations of paragraph 17 of the complaint are admitted.

18. The allegations of paragraph 18 of the complaint are admitted.

19. The allegations of paragraph 19 of the complaint are admitted.

20. The allegations of paragraph 20 of the complaint are admitted.

21. The allegations of paragraph 21 of the complaint are admitted.

22. The allegations of paragraph 22 of the complaint are admitted.

23. The allegations of paragraph 23 of the complaint are admitted.

24. For answer to paragraph 24 of the complaint, this defendant says that it has no knowledge of the position of the State of Florida as to the escheat of money orders.

25. For answer to paragraph 25 of the complaint, this defendant says that it has no knowledge of the position of the State of Oregon as to the escheat of money orders.

26. The allegations of paragraph 26 of the complaint are admitted. The escheat of money orders in Virginia is governed by chapter 11.1 of Title 55 of the Code of Virginia (1950), as amended, (1960 Acts of Assembly, ch. 330; 1964 Acts of Assembly, ch. 466; 1970 Acts of Assembly, ch. 158). A copy of such statutes is attached as an appendix hereto.

27. The allegations of paragraph 27 of the complaint are admitted.

28. The allegations of paragraph 28 of the complaint are admitted.

29. The allegations of paragraph 29 of the complaint are admitted.

30. The allegations of paragraph 30 of the complaint are admitted insofar as they relate to the money orders as to which no drafts were issued, except that this defendant does not know that any state claims such amounts as the state of destination.

The allegations of paragraph 30 of the complaint are admitted insofar as they relate to the money orders as to which drafts were issued, except that this defendant does not admit that "payment" is necessary to relieve Western Union of its obligation to the sender; this defendant alleges that the issuance of the draft to the sendee fulfills its contract with the sender and leaves Western Union liable only to the sendee.

31. The allegations of paragraph 31 of the complaint are admitted.

32. For answer to paragraph 32 of the complaint, this defendant alleges that the question before this Court is not whether issuance of a draft constitutes absolute or unconditional payment of a money order but whether, under the terms of its contract, Western Union becomes liable to the payee of the draft upon its issuance.

33. The allegations of paragraph 33 of the complaint are admitted.

34. The allegations of paragraph 34 of the complaint are admitted.

35. The allegations of paragraph 35 of the complaint are admitted.

Now, having fully answered, the Commonwealth of Virginia joins in the enumerated prayers (3) through (7) of the complaint and further prays that it may have such other and further relief as this Court may deem just.

COMMONWEALTH OF VIRGINIA

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August 11, 1970

APPENDIX

CODE OF VIRGINIA (1950), AS AMENDED

Title 55, Chapter 11.1—Disposition of Unclaimed Property

ARTICLE 1.

Citation of Chapter and Definitions.

§ 55-210.1. CITATION OF CHAPTER.—This chapter may be cited as "The Uniform Disposition of Unclaimed Property Act."

§ 55-210.2. DEFINITIONS.—As used in this chapter, unless the context otherwise requires:

(a) *"Banking organization"* means any bank, trust company, savings bank or a private banker engaged in business in this State, or a bank as defined in § 6-6 of the Code of Virginia.

(b) *"Business association"* means any corporation (other than a public corporation), joint-stock company, business trust, partnership, or any association for business purposes of two or more individuals.

(c) *"Financial organization"* means any savings and loan association, building and loan association, credit union, or investment company, engaged in business in this State.

(d) *"Holder"* means any person in possession of property subject to this chapter belonging to another, or who is trustee in case of a trust, or is indebted to another or an obligation subject to this chapter.

(e) *"Life insurance corporation"* means any association or corporation transacting within this State the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

(f) *"Owner"* means a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant, or payee

in case of other choses in action, or any person having a legal or equitable interest in property subject to this chapter, or his legal representative.

(g) *"Person"* means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(h) *"Utility"* means any person who owns or operates within this State, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

ARTICLE 2.

Property Abandoned or Presumed Abandoned.

§ 55-210.3. WHEN INTANGIBLE PERSONAL PROPERTY HELD OR OWING BY BANKING OR FINANCIAL ORGANIZATION PRESUMED ABANDONED.—The following property held or owing by a banking or financial organization is presumed abandoned:

(a) Any demand, savings, or matured time deposit made in this State with a banking organization, together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, unless the owner has, within seventeen years:

(1) Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest; or

(2) Corresponded in writing with the banking organization concerning the deposit; or

(3) Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization.

(b) Any funds paid in this State toward the purchase of shares or other interest in a financial organization or any deposit made therewith in this State, and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has within seventeen years:

(1) Increased or decreased the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends; or

(2) Corresponded in writing with the financial organization concerning the funds or deposits; or

(3) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization.

(c) Any sum payable on checks certified in this State or on written instruments issued in this State on which a banking or financial organization is directly liable, including, by way of illustration but not of limitation, certificates of deposit, drafts and traveler's checks, that has been outstanding for more than seventeen years from the date it was payable, or from the date of its issuance if payable on demand, unless the owner has within seventeen years corresponded in writing with the banking or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization.

(d) Any funds or other personal property, tangible or intangible, removed from a safe-deposit box or any other safekeeping repository in this State on which the lease or

rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than seventeen years from the date on which the lease or rental period expired.

§ 55-210.4. WHEN FUNDS HELD AND OWING BY LIFE INSURANCE CORPORATION PRESUMED ABANDONED.—(a) Unclaimed funds, as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if, the last known address, according to the records of the corporation, of the person entitled to the funds is within this State. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

(b) "Unclaimed funds," as used in this section, means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than seven years after the moneys became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding seven years, (1) assigned, readjusted, or paid premiums on the policy, or subject the policy to

loan, or (2) corresponded in writing with the life insurance corporation concerning the policy. Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

§ 55-210.5. WHEN FUNDS HELD OR OWING BY UTILITY PRESUMED ABANDONED.—The following funds held or owing by any utility are presumed abandoned:

(a) Any deposit made by a subscriber with a utility subsequent to nineteen hundred fifty-one to secure payment for, or any sum paid in advance for, utility services to be furnished in this State, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven years after the termination of the services for which the deposit or advance payment was made.

(b) Any sum which a utility has been ordered to refund and which was received for utility services rendered in this State, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven years after the date it became payable in accordance with the final determination or order providing for the refund.

§ 55-210.6. WHEN STOCK IN OR SUM HELD OR OWING BY BUSINESS ASSOCIATION PRESUMED ABANDONED.—Any stock or other certificate of ownership, or any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative, who has not claimed it, or corresponded in writing with the

business association concerning it, within seven years after the date prescribed for payment or delivery, is presumed abandoned if:

(a) It is held or owing by a business association organized under the laws of or created in this State; or

(b) It is held or owing by a business association doing business in this State, but not organized under the laws of or created in this State, and the records of the business association indicate that the last known address of the person entitled thereto is in this State.

§ 55-210.6:1. WHEN INTANGIBLE INTEREST IN BUSINESS ASSOCIATION PRESUMED ABANDONED.—(a) Any intangible interest in a business association, as evidenced by the stock records or membership records of the association, is presumed abandoned if (1) the interest in the association is owned by a person who for more than seventeen years has neither claimed a dividend or other sum nor corresponded in writing with the association or otherwise indicated an interest as evidenced by a memorandum or other record on file with the association, and (2) the association does not know the location of the owner at the end of such seventeen-year period. With respect to such interest, the business association shall be deemed the holder.

(b) Any dividend or other distribution held for or owing to a person at the time the stock or other security to which such dividend or other distribution attaches, is considered abandoned at the same time.

§ 55-210.7. WHEN INTANGIBLE PERSONAL PROPERTY DISTRIBUTABLE IN COURSE OF BUSINESS ASSOCIATION, ETC., PRESUMED ABANDONED.—All intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization, or financial or-

ganization organized under the laws of or created in this State, that is unclaimed by the owner within two years after the date for final distribution, is presumed abandoned.

§ 55-210.8. WHEN INTANGIBLE PERSONAL PROPERTY HELD IN FIDUCIARY CAPACITY PRESUMED ABANDONED.—All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within seven years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary:

(a) If the property is held by a banking organization or a financial organization, or by a business association organized under the laws of or created in this State; or

(b) If it is held by a business association, doing business in this State, but not organized under the laws of or created in this State, and the records of the business association indicate that the last known address of the person entitled thereto is in this State; or

(c) If it is held in this State by any other person.

§ 55-210.9. WHEN INTANGIBLE PERSONAL PROPERTY HELD FOR OWNER BY COURT OR OTHER PUBLIC AGENCY PRESUMED ABANDONED.—All intangible personal property held for the owner by any State or federal court, public corporation, public authority, or public officer in this State, or a political subdivision thereof, that has remained unclaimed by the owner for more than seven years is presumed abandoned, provided, however, that this provision shall in no way affect the laws of this State relating to such property in the custody or control of any State court or on deposit or

that may be deposited in a bank or other depository to the credit of any court in any cause, and provided further that if any federal statute provides for the distribution of any unclaimed property subject to the jurisdiction of a federal court, this statute shall not apply.

§ 55-210.10. WHEN OTHER INTANGIBLE PERSONAL PROPERTY HELD OR OWING IN ORDINARY COURSE OF HOLDER'S BUSINESS PRESUMED ABANDONED.—All intangible personal property, not otherwise covered by this chapter, including any income or increment thereon and deducting any lawful charges, that is held or owing in this State in the ordinary course of the holder's business and has remained unclaimed by the owner for more than seven years after it became payable or distributable is presumed abandoned.

ARTICLE 3.

Reciprocity for Property Presumed Abandoned or Escheated Under the Laws of Another State.

§ 55-210.11. WHEN CERTAIN PROPERTY NOT PRESUMED ABANDONED IN THIS STATE.—If specific property which is subject to the provisions of §§ 55-210.3, 55-210.6, 55-210.7, 55-210.8 and 55-210.10 is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that state, the specific property is not presumed abandoned in this State and subject to this chapter if:

(a) It may be claimed as abandoned or escheated under the laws of such other state; and

(b) The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is

within this State by a holder who is subject to the jurisdiction of this State.

ARTICLE 4.

Procedural and Administrative Matters.

§ 55-210.12. REPORT TO BE MADE BY HOLDER OF FUNDS OR PROPERTY PRESUMED ABANDONED; HOLDER TO EXERCISE DUE DILIGENCE TO LOCATE OWNER.—(a) Every person holding funds or other property, tangible or intangible, presumed abandoned under this chapter shall report to the State Treasurer with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of fifty dollars or more presumed abandoned under this chapter;

(2) In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his last known address according to the life insurance corporation's records;

(3) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under fifty dollars each may be reported in aggregate;

(4) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(5) Other information which the State Treasurer prescribes by rule as necessary for the adminsitration of this chapter.

(c) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(d) The report shall be filed before November one of each year as of June thirty next preceding, but the report of life insurance corporations shall be filed before May one of each year as of December thirty-one next preceding. The State Treasurer may postpone the reporting date upon written request by any person required to file a report.

(e) If the holder of property presumed abandoned under this chapter knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner.

(f) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

(g) The initial report filed under this chapter shall include all items of property that would have been presumed abandoned if this chapter had been in effect during the ten-year period preceding January one, nineteen hundred sixty-one.

§ 55-210.13. NOTICES TO BE PUBLISHED AND MAILED BY STATE TREASURER.—(a) Within one hundred twenty days from the filing of the report required by § 55-210.12, the

State Treasurer shall cause notice to be published at least once each week for two successive weeks in an English language newspaper of general circulation in the county or city in this State in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this State, the notice shall be published in the county or city in which the holder of the abandoned property has his principal place of business within this State.

(b) The published notice shall be entitled "Notice of Names of Persons Appearing to Be Owners of Abandoned Property," and shall contain:

(1) The names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified.

(2) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the State Treasurer.

(3) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within sixty-five days from the date of the second published notice, the abandoned property will be placed not later than eighty-five days after such publication date in the custody of the State Treasurer to whom all further claims must thereafter be directed.

(c) The State Treasurer is not required to publish in such notice any item of less than twenty-five dollars unless he deems such publication to be in the public interest.

(d) Within one hundred twenty days from receipt of the report required by § 55-210.12, the State Treasurer shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars or more presumed abandoned under this chapter.

(e) The mailed notice shall contain:

(1) A statement that, according to a report filed with the State Treasurer, property is being held to which the addressee appears entitled.

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the State Treasurer to whom all further claim must be directed.

§ 55-210.14. WHEN PROPERTY PRESUMED ABANDONED TO BE PAID OR DELIVERED TO STATE TREASURER.—Every person who has filed a report as provided by § 55-210.12 shall within twenty days after the time specified in § 55-210.13 for claiming the property from the holder pay or deliver to the State Treasurer all abandoned property specified in the report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in § 55-210.13, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the State Treasurer, but in lieu thereof shall file a verified

written explanation of the proof of claim or of the error in the presumption of abandonment.

§ 55-210.15. HOLDER RELIEVED OF LIABILITY FOR PROPERTY PAID OR DELIVERED TO STATE TREASURER; PAYMENT TO OWNER BY HOLDER; PROCEEDINGS AGAINST PRIOR HOLDER; NOTICE TO STATE TREASURER AND ATTORNEY GENERAL; REIMBURSEMENT OF HOLDER.—(a) Upon the payment or delivery of abandoned property to the State Treasurer, the State shall assume custody and shall be responsible for the safekeeping thereof. Any person who pays or delivers abandoned property to the State Treasurer under this chapter is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property. Any holder who has paid moneys to the State Treasurer pursuant to this chapter may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the State Treasurer shall forthwith reimburse the holder for the payment.

(b) In the event legal proceedings are instituted against a prior holder in a court of this State, or in any other state or federal court, by any other state claiming to be entitled to unclaimed funds or abandoned property previously paid or delivered to the State Treasurer, such holder shall give written notice to the State Treasurer and the Attorney General of this State of such proceedings within ten days after service of process, or in the alternative at least ten days before the return date on which an answer or similar pleading is required to be filed. The Attorney General may intervene or take such other action as he deems appropriate or necessary to protect the interests of this State.

(c) If the notice provided in paragraph (b) is given by the holder and thereafter a judgment is entered against the holder for any amount paid to the State Treasurer pursuant to the terms of this chapter, the State Treasurer shall, upon being furnished with proof thereof, return to the holder the amount of such judgment, not to exceed, however, the amount of the abandoned property paid to the State Treasurer.

§ 55-210.16. OWNER NOT ENTITLED TO INCOME OR OTHER INCREMENTS—When property is paid or delivered to the State Treasurer under this chapter, the owner is not entitled to receive income or other increments accruing thereafter.

§ 55-210.17. EFFECT OF EXPIRATION OF PERIOD DURING WHICH ACTION OR PROCEEDING MAY BE COMMENCED OR ENFORCED.—The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, not affect any duty to file a report required by this chapter or to pay or deliver abandoned property to the State Treasurer.

§ 55-210.18. SALE OF ABANDONED PROPERTY BY STATE TREASURER.—(a) All abandoned property other than money delivered to the State Treasurer under this chapter shall within one year after the delivery be sold by him to the highest bidder at public sale in whatever city, in the State affords in his judgment the most favorable market for the property involved. The State Treasurer may decline the highest bid and reoffer the property for sale if he considers the price bid insufficient. He need not offer any property for sale if,

in his opinion, the probable cost of sale exceeds the value of the property.

(b) Any sale held under this section shall be preceded by a single publication of notice thereof, at least three weeks in advance of sale in an English language newspaper of general circulation in the county or city where the property is to be sold.

(c) The purchaser at any sale conducted by the State Treasurer pursuant to this chapter shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The State Treasurer shall execute all documents necessary to complete the transfer of title.

§ 55-210.19. DISPOSITION OF FUNDS RECEIVED UNDER CHAPTER; RECORDS TO BE KEPT BY STATE TREASURER.—(a) All funds received under this chapter, including the proceeds from the sale of abandoned property under § 55-210.18, shall forthwith be deposited by the State Treasurer in the Literary Fund of the State, except that the State Treasurer shall retain in a separate trust fund an amount not exceeding twenty-five thousand dollars from which he shall make prompt payment of claims duly allowed by him as hereinafter provided. Before making the deposit he shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

(b) Before making any deposit to the credit of the Literary Fund the State Treasurer may deduct: (1) any costs in connection with sale of abandoned property, (2) any costs of mailing and publication in connection with any abandoned property, and (3) reasonable service charges.

§ 55-210.20. FILING CLAIM TO PROPERTY OR PROCEEDS OF SALE THEREOF.—Any person claiming an interest in any property delivered to the State under this chapter may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the State Treasurer.

§ 55-210.21. CONSIDERATION OF AND HEARING ON CLAIM BY STATE TREASURER.—(a) The State Treasurer shall consider any claim filed under this chapter and may hold a hearing and receive evidence concerning it. If a hearing is held, he shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him and the reasons for his decision. The decision shall be a public record.

(b) If the claim is allowed, the State Treasurer shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

§ 55-210.22. JUDICIAL REVIEW OF DECISION OF STATE TREASURER.—Any person aggrieved by a decision of the State Treasurer or as to whose claim the State Treasurer has failed to act within ninety days after the filing of the claim, may commence an action in the circuit or corporation court of the county or city wherein the property claimed is situated to establish his claim. The proceeding shall be brought within ninety days after the decision of the State Treasurer or within one hundred eighty days from the filing of the claim if the State Treasurer fails to act.

§ 55-210.23. ELECTION OF STATE TREASURER NOT TO RECEIVE PROPERTY OR TO POSTPONE TAKING POSSESSION OF FUNDS.—The State Treasurer after receiving reports of property deemed abandoned pursuant to this chapter, may decline to receive any property reported which he deems to have a value less than the cost of giving notice and holding sale, or he may, if he deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates. Unless the holder of the property is notified to the contrary within one hundred twenty days after filing the recort required under § 55-210.12, the State Treasurer shall be deemed to have elected to receive the custody of the property.

§ 55-210.24. STATE TREASURER MAY EXAMINE RECORDS OF PERSONS FAILING TO REPORT PROPERTY.—The State Treasurer may at reasonable times and upon reasonable notice examine the records of any person if he has reason to believe that such person has failed to report property that should have been reported pursuant to this chapter.

§ 55-210.25. ACTION BY STATE TREASURER TO ENFORCE DELIVERY OF PROPERTY.—If any person refuses to deliver property to the State Treasurer as required under this chapter, he shall bring an action in a court of appropriate jurisdiction to enforce such delivery.

§ 55-210.26. PENALTIES FOR FAILURE TO MAKE REPORT OR TO PAY OR DELIVER PROPERTY TO STATE TREASURER.—(a) Any person who wilfully fails to render any report or perform other duties required under this chapter, shall be punished by a fine of one hundred dollars for each day such report is withheld.

(b) Any person who wilfully refuses to pay or deliver abandoned property to the State Treasurer as required

under this chapter shall be punished by a fine of not less than one hundred dollars or imprisonment for not more than one month, or both, in the discretion of the court.

§ 55-210.27. RULES AND REGULATIONS OF STATE TREASURER.—The State Treasurer may make necessary rules and regulations to carry out the provisions of this chapter.

§ 55-210.28. PROPERTY PRESUMED ABANDONED OR ESCHEATED UNDER LAWS OF ANOTHER STATE.—This chapter shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to January one, nineteen hundred sixty-one.

§ 55-210.29. CONSTRUCTION OF CHAPTER.—This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

CERTIFICATE OF SERVICE

I, William M. Phillips, an Assistant Attorney General of Virginia, a member of the Bar of the Supreme Court of the United States and one of the counsel for the Commonwealth of Virginia in the above-captioned matter, hereby certify that copies of this Answer of the Commonwealth of Virginia have been served upon counsel for the parties hereto by depositing the same in the United States Post Office with first-class postage prepaid, this 11th day of August, 1970, pursuant to the provisions of Rule 33(1) of the Rules of the Supreme Court of the United States, as follows:

1. Commonwealth of Pennsylvania
   Honorable William C. Sennett
   Attorney General of the
   Commonwealth of Pennsylvania
   Harrisburg, Pennsylvania 17120

2. State of New York
   Honorable Louis J. Lefkowitz
   Attorney General of the State of New York
   Albany, New York

3. State of Florida
   Honorable Earl Faircloth
   Attorney General of the State of Florida
   Tallahasse, Florida

4. State of Oregon
   Honorable Lee Johnson
   Attorney General of the State of Oregon
   Salem, Oregon

5. The Western Union Telegraph Company
   Peter F. Oates, Esquire
   Assistant General Counsel
   The Western Union Telegraph Company
   60 Hudson Street
   New York, New York

All parties required to be served have been served.

WILLIAM M. PHILLIPS
Assistant Attorney General

SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
AUG 15 1970
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969
No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,

Defendants

ANSWER
(STATE OF FLORIDA)

EARL FAIRCLOTH
ATTORNEY GENERAL of Florida

T. T. TURNBULL
Assistant Attorney General of Florida

WINIFRED L. WENTWORTH
Assistant Attorney General of Florida

ATTORNEYS FOR THE DEFENDANT
STATE OF FLORIDA

IN THE

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COMMONWEALTH OF PENNSYLVANIA,

Plaintiff

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,

Defendants

ANSWER
(STATE OF FLORIDA)

The State of Florida, a sovereign state of the United States of America, by and through its Attorney General, for its answer to the complaint herein, says:

1. It admits the allegations of fact in paragraph numbered I.

2. It admits the allegations of fact in paragraph numbered II but controverts the conclusion in subparagraphs 9(f), 12 and 15 that cancellation of a money order is legally accomplished "by the paying office notifying the sending office that payment has not been effected."

3. It is without actual knowledge of the matters of fact alleged in paragraph numbered III of the complaint, but for the purposes of this litigation they are admitted except insofar as they assume an effective cancellation of money orders by notice as noted in paragraph 2. of this answer.

4. It is without actual knowledge of the matters of fact alleged in paragraph numbered IV of the complaint, but for the purposes of this litigation they are admitted.

5. The State of Florida, for the purposes of its claim to the properties in question hereby adopts and repeats the allegations of fact of the plaintiff in its complaint herein insofar as the same may be applied to the rights and interests of the State of Florida in the disposition of the issues of law raised by the complaint, based on facts therein alleged, as to the situs of the unclaimed intangible personal property described.

6. The Comptroller of the State of Florida, now designated the Department of Banking and Finance by Chapter 69-106, Laws of Florida, is charged with the administration of the Florida unclaimed property statutes, Chapter 717, Florida Statutes, attached hereto as Exhibit A, enacted without subsequent substantive amendment (except §717.131) as Chapter 61-10, Laws of Florida, Acts of 1961, in a form substantially the same as the Uniform Disposition of Unclaimed Property Act approved by the National Conference on Uniform Laws in 1955. Under this law Florida claims it is entitled to the custody of unclaimed funds represented by the money orders in question which were sent to a Florida destination, or those sent to a payee whose last known address shown by the books of the debtor is in Florida, because the right of escheat vests in the state having jurisdiction of the payee or obligee in such transactions.

WHEREFORE, the defendant State of Florida prays:

(1) That this Court take jurisdiction of the parties and subject matter herein;

(2) That this Court hear and determine the controversies herein, either by referring this case to a Special Master or Federal District Court to take evidence and make appropriate reports, or in such other manner as the Court deems fit;

(3) That a temporary injunction be issued restraining the defendant, The Western Union Telegraph Company, from paying, delivering, or in any manner relinquishing, the said property to any other State pending further orders of this Court;

(4) That judgment be entered that the moneys held by Western Union are subject to the escheat or custody of one or more of the following States:

(a) The State of destination of the money orders, as shown by the books and records of Western Union;

(b) The State in which a draft has been issued for the amount of the money order or the amount of the refund, as shown by the books and records of Western Union;

(c) The State of last known address of the sendee of a money order, as shown by the books and records of Western Union;

(d) The State of the last known address of the payee of a draft, as shown by the books and records of Western Union;

(5) That such judgment decree that no State other than the State or States designated under (4) above has the power to escheat or custody of, or the right to prosecute a claim of escheat or custody against, such property.

(6) That the defendant, the State of Florida, have such other and further relief as this Court may deem just.

EARL FAIRCLOTH
Attorney General of Florida

T. T. TURNBULL
Assistant Attorney General

WINIFRED L. WENTWORTH
Assistant Attorney General

CHAPTER 717
DISPOSITION OF UNCLAIMED PROPERTY

717.01 Short title.
717.02 Definitions and use of terms.
717.03 Property held by banking or financial organizations.
717.04 Unclaimed funds held by insurance corporations.
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717.01 Short title.—This act may be cited as the Florida disposition of unclaimed property act.

History.—§31, ch. 61-10.

717.02 Definitions and use of terms.—As used in this act, unless the context otherwise requires:

(1) "Banking organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company.

(2) "Business association" means any corporation, joint stock company, business trust, partnership, or any association for business purposes of two or more individuals.

(3) "Financial organization" means any savings and loan association, building and loan association, credit union, cooperative bank, or investment company, engaged in business in this state.

(4) "Holder" means any person in possession of property subject to this act belonging to another, or who is trustee in case of a trust, or indebted to another on an obligation subject to this act.

(5) "Insurance corporation" means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities; disability, accident and health insurance; and property, casualty and surety insurance; as all said terms are defined in chapter 624, part V.

(6) "Owner" means a depositor, or a person entitled to receive the funds as reflected on the records of the bank or financial organization, in case of a deposit, a beneficiary in case of a trust, a creditor, claimant, or payee in case of other choses in action, or any person

having a legal or equitable interest in property subject to this act, or his legal representative.

(7) "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(8) "Utility" means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications, for the production, storage, transmission, sale, delivery or furnishing, of electricity, water, steam, or gas, or for the transportation of persons or property.

*(9) ["Department" means the department of banking and finance.]

History.—§ 1, ch. 61-10; §§ 12, 35, ch. 69-106.

*Note.—In order to conform with § 12, ch. 69-106, the editors have substituted a definition of "department" for "administrator." This subsection will be appropriately amended by a subsequent reviser's bill.

717.03 Property held by banking or financial organizations.—The following property held or owing by a banking or financial organization is presumed abandoned:

(1) Any demand, savings, or matured time deposit made in this state with a banking organization, together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, unless the owner has, within fifteen years:

(a) Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest; or

(b) Corresponded in writing with the banking organization concerning the deposit; or

(c) Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization.

(2) Any funds paid in this state toward the purchase of shares or other interest in a financial organization, or any deposit made therewith in this state, and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has within fifteen years:

(a) Increased or decreased the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends; or

(b) Corresponded in writing with the financial organization concerning the funds or deposit; or

(c) Otherwise indicated an interest in the fund or deposit as evidenced by a memorandum on file with the financial organization.

(3) Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization is directly liable, including by way of illustration but not of limitation, certificates of deposit, drafts, and traveler's checks, that has been outstanding for more than fifteen years from the date it was payable, or from the date of its issuance if payable on demand, unless the owner has within fifteen years corresponded in writing with the banking or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization.

(4) Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository, or agency or collateral deposit box, in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than fifteen years from the date on which the lease or rental period expired.

History.—§ 2, ch. 61-10.

717.04 Unclaimed funds held by insurance corporations.—

(1) LIFE INSURANCE.—

(a) Unclaimed funds, as defined in this subsection, held and owing by a life

insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

(b) Unclaimed funds as used in subsection (1), means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than fifteen years after the moneys become due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding fifteen years,

1. Assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or

2. Corresponded in writing with the life insurance corporation concerning the policy.

(2) INSURANCE OTHER THAN LIFE INSURANCE.—

(a) Unclaimed funds as defined in subsection (1), held and owing by a fire, casualty or surety insurance corporation shall be presumed abandoned if the last known address according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured, the principal, or the claimant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured, the principal, or the claimant according to the records of the corporation.

(b) Unclaimed funds as used in subsection (2), means all moneys held and owing by any fire, casualty or surety insurance corporation unclaimed and unpaid for more than fifteen years after the moneys become due and payable as established from the records of the corporation either to an insured, a principal, or a claimant under any fire, casualty or surety insurance policy or contract.

(3) Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

History.—§ 3, ch. 61-10.

717.05 Deposits and refunds held by utilities.—The following funds held or owing by any utility are presumed abandoned:

(1) Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than fifteen years after the termination of the services for which the deposit or advance payment was made.

(2) Any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than fifteen years after the date it became payable in accordance with the final determination or order providing for the refund.

(3) Any sum paid to a utility for a utility service, which service has not,

within fifteen years of such payment, been rendered.

History.—§ 4, ch. 61-10.

717.06 Undistributed dividends and distribution of business associations.—Any stock or other certificate of ownership, or any dividend, profit distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative, who has not claimed it, or corresponded in writing with the business association concerning it, within fifteen years after the date prescribed for payment or delivery, is presumed abandoned if:

(1) It is held or owing by a business association organized under the laws of or created in this state; or

(2) It is held or owing by a business association doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state.

History.—§ 5, ch. 61-10.

717.07 Property of business associations and banking or financial organizations held in course of dissolution.—All intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization, or financial organization organized under the laws of or created in this state, that is unclaimed by the owner within fifteen years after the date for final distribution is presumed abandoned.

History.—§ 6, ch. 61-10.

717.08 Property held by fiduciaries.—All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within fifteen years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary:

(1) If the property is held by a banking organization or a financial organization, or by a business association organized under the laws of or created in this state; or

(2) If it is held by a business association, doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state; or

(3) If it is held in this state by any other person.

History.—§ 7, ch. 61-10.

717.09 Property held by state courts and public officers and agencies.—All intangible personal property held for the owner by any court, public corporation, public authority or public officer of this state, or a political subdivision thereof that has remained unclaimed by the owner for more than fifteen years is presumed abandoned.

History.—§ 8, ch. 61-10.

717.10 Miscellaneous personal property held for another person.—All intangible personal property, not otherwise covered by this act, including any income or increment thereon and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than fifteen years after it became payable or distributable is presumed abandoned.

History.—§ 9, ch. 61-10.

717.11 Reciprocity for property presumed abandoned or escheated under the laws of another state.—If specific property which is subject to the provisions of this act is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to this act if:

(1) It may be claimed as abandoned or escheated under the laws of such other state; and

(2) The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state.

History.—§ 10, ch. 61-10.

717.12 Report of abandoned property.—

(1) Every person holding funds or other property, tangible or intangible, presumed abandoned under this act shall report to the department of banking and finance with respect to the property as hereinafter provided.

(2) The report shall be verified and shall include:

(a) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of twenty-five dollars or more presumed abandoned under this act;

(b) In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his last known address according to the life insurance corporation's records;

(c) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under twenty-five dollars each may be reported in aggregate;

(d) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(e) Other information which the department prescribes by rule as necessary for the administration of this act.

(3) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(4) The report shall be filed before November 1 of each year as of June 30 next preceding, but the report of insurance corporations shall be filed before May 1 of each year as of December 31 next preceding. The department may postpone the reporting date upon written request by any person required to file a report.

(5) If the holder of property presumed abandoned under this act knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner.

(6) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

(7) The initial report filed under this act shall include all items of property that would have been presumed abandoned if this act had been in effect during the ten year period preceding September 30, 1961.

History.—§ 11, ch. 61-10; §§ 12, 35, ch. 69-106.

717.13 Notice and publication of lists of abandoned property.—

(1) Within one hundred twenty days from the filing of the report required by § 717.12, the department shall cause notice to be published at least once each week for two successive weeks in a newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this state.

(2) The published notice shall be

entitled "Notice of names of persons appearing to be owners of abandoned property," and shall contain:

(a) The names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified.

(b) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the department.

(c) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within sixty-five days from the date of the second published notice, the abandoned property will be placed not later than eighty-five days after such publication date in the custody of the department to which all further claims must thereafter be directed.

(3) The department is not required to publish in such notice any item of less than twenty-five dollars unless it deems such publication to be in the public interest.

(4) Within one hundred twenty days from the receipt of the report required by § 717.12, the department shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars or more presumed abandoned under this act.

(5) The mail notice shall contain:

(a) A statement that, according to a report filed with the department property is being held to which the addressee appears entitled.

(b) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(c) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the department to which all further claims must be directed.

History.—§ 12, ch. 61-10; §§ 12, 35, ch. 69-106.

717.131 Petition for declaration of abandoned property.—

(1) After a finding that diligent search and inquiry for the owner thereof has been made, the circuit court may declare abandoned any personal property, tangible or intangible, upon the filing of a petition with the court, notwithstanding the fifteen-year waiting period provided for in this chapter. Such petition shall show:

(a) All proceedings specified by §§ 717.12 and 717.13 have been followed; and

(b) All salient facts regarding the abandoned property necessary for a judicial determination.

(2) If the petition is granted, the court shall order that all such property shall be delivered to the department as provided for in this chapter.

History.—§ 1, ch. 67-35; §§ 12, 35, ch. 69-106.

717.14 Payments or delivery of abandoned property.—Every person who has filed a report as provided by § 717.12 shall within twenty days after the time specified in § 717.13 for claiming the property from the holder pay or deliver to the department all abandoned property specified in the report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder with the time specified in § 717.13, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the department, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

History.—§ 13, ch. 61-10; §§ 12, 35, ch. 60-106.

717.15 Relief from liability by payment or delivery.—Upon the payment or delivery of abandoned property to the department, the state shall assume custody and shall be responsible for the safekeeping thereof. Any person who pays or delivers abandoned property to the department to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property. Any holder who has paid moneys to the department pursuant to this act may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the department shall forthwith reimburse the holder for the payment.

History.—§ 14, ch. 61-10; §§ 12, 35, ch. 69-106.

717.16 Income accruing after payment or delivery.—When property is paid or delivered to the department under this act, the owner is not entitled to receive income or other increments accruing thereafter.

History.—§ 15, ch. 61-10; §§ 12, 35, ch. 69-106.

717.17 Periods of limitation not a bar.—The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this act or to pay or deliver abandoned property to the department.

History.—§ 16, ch. 61-10; §§ 12, 35, ch. 69-106.

717.18 Sale of abandoned property.—

(1) All abandoned property other than money delivered to the department under this act may be sold by it. Such sale shall be to the highest bidder at public sale in whatever place in the state affords in its judgment the most favorable market for the property involved. The department may decline the highest bid and re-offer the property for sale if it considers the price bid insufficient. It need not offer any property for sale if, in its opinion, the probable cost of sale exceeds the value of the property.

(2) Any sale held under this section shall be preceded by a single publication of notice thereof, at least three weeks in advance of sale in a newspaper of general circulation in the county where the property is to be sold.

(3) The purchaser at any sale conducted by the department pursuant to this act shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The department shall execute all documents necessary to complete the transfer of title.

History.—§ 17, ch. 61-10; §§ 12, 35, ch. 69-106.

717.19 Deposit of funds.—

(1) All funds received under this act, including the proceeds from the sale of abandoned property under § 717.18 shall forthwith be deposited by the department in the state school fund of the state, except that the department shall retain in a separate account an amount not exceeding one hundred thousand dollars from which it shall make prompt payment of claims duly allowed by it as hereinafter provided. Before making the deposit it shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last knwon address of each insured person or annuitant, and with respect to each policy or contract listed in the report of an insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

(2) Before making any deposit to the credit of the state school fund, the department may deduct:

(a) Any costs in connection with sale of abandoned property,

(b) Any costs of mailing and publication in connection with any abandoned property.

History.—§ 18, ch. 61-10; §§ 12, 35, ch. 69-106.

717.20 Claim for abandoned property paid or delivered.—Any person claiming at any time an interest in any property delivered to the state under this act may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the department.

History.—§ 19, ch. 61-10; §§ 12, 35, ch. 69-106.

717.21 Determination of claims.—

(1) The department shall consider any claim filed under this act and may hold a hearing and receive evidence concerning it. If a hearing is held, it shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by it and the reasons for its decision. The decision shall be a public record.

(2) If the claim is allowed, the department shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

History.—§ 20, ch. 61-10; §§ 12, 35, ch. 69-106.

717.22 Judicial action upon determination.—Any person aggrieved by a decision of the department or as to whose claim the department has failed to act within ninety days after the filing of the claim, may commence an action in the circuit court of the second judicial circuit in and for Leon county, to establish his claim. The proceeding shall be brought within ninety days after the decision of the department or within one hundred eighty days from the filing of the claim if the department fails to act. The action shall be tried de novo without a jury.

History.—§ 21, ch. 61-10; §§ 12, 35, ch. 69-106.

717.23 Election to take payment or delivery.—The department, after receiving reports of property deemed abandoned pursuant to this act, may decline to receive any property reported which it deems to have a value less than the cost of giving notice and holding sale or it may, if it deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates.

History.—§ 22, ch. 61-10; §§ 12, 35, ch. 69-106.

717.24 Examination of records.—The department may at reasonable times and upon reasonable notice examine the records of any person if it has reason to believe that such person has failed to report property that should have been reported pursuant to this act. If any person refuses to permit the examination of his records, the department may issue subpoena to compel such person to testify and produce his records; said subpoena to be served by the sheriff of the county where the person resides or may be found. Such person shall be entitled to the same per diem and mileage as witnesses appearing in the circuit court of the state which shall be paid by the state. If any person shall refuse to obey any subpoena so issued or shall refuse to testify or produce his records, the department may present its petition to the circuit court of the county where any such person is served with the subpoena or where he resides, whereupon said court shall issue its rule nisi to such person requiring him to obey forthwith the subpoena issued by the board or show cause why he fails to obey the same, and unless the said person shows sufficient cause for failing to obey the said subpoena, the court shall forthwith direct such person to obey the same, and upon his refusal to comply, he shall be adjudged in contempt of court and shall be punished as the court may direct.

History.—§ 23, ch. 61-10; §§ 12, 35, ch. 69-106.

717.25 Proceeding to compel delivery of abandoned property.—If any person refuses to deliver property to the department as required under this act, it shall bring an action in a court of

appropriate jurisdiction to enforce such delivery.

History.—§ 24, ch. 61-10; §§ 12, 35, ch. 69-106.

*717.26 Administration.—The administrator shall create a division of his office, to be known as the abandoned property office, for the purpose of administering the provisions of this act and of chapter 716. An appropriation shall be made biennially for the maintenance of such office, and to provide sufficient staff to adequately enforce the provisions of this law. Other divisions of the office of the administrator, as well as all state officers and employees generally, shall assist in the enforcement of this act in connection with the performance of their normal duties.

History.—§ 25, ch. 61-10.

*Note.—This section was rendered obsolete by § 12, ch. 69-106 and will be repealed by a subsequent reviser's bill.

717.27 Penalties.—

(1) Any person who wilfully fails to render any report or perform other duties required under this act, shall be punished as for a misdemeanor.

(2) Any person who wilfully refuses to pay or deliver abandoned property to the department as required under this act shall be punished as for a misdemeanor.

History.—§ 26, ch. 61-10; §§ 12, 35, ch. 69-106.

717.28 Rules and regulations.—The department is hereby authorized to make necessary rules and regulations to carry out the provisions of this act.

History.—§ 27, ch. 61-10; §§ 12, 35, ch. 69-106.

717.29 Effect of laws of other states.—This act shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to September 30, 1961.

History.—§ 28, ch. 61-10.

717.30 Repeal.—This act shall not repeal, but shall be additional and supplemental to the existing provisions of §§ 43.17-43.19, 402.17, and 550.164, chapter 716, §§ 731.28, 731.33.

History.—§ 30, ch. 61-10.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969
No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,

Defendants

PROOF OF SERVICE

I, T. T. TURNBULL, Assistant Attorney General of the State of Florida, hereby certify that I am one of the attorneys for the defendants, State of Florida, that I am a member of the Bar of the Supreme Court of the United States, and that on the 13 day of Aug. , 1970, I served copies of the foregoing Answer, and also of the Brief in Support of the Answer, on each of the parties by depositing such copies, air mail postage prepaid, in a United States Post Office, addressed as follows:

1. State of Pennsylvania

(a) Honorable Raymond P. Shafer
Governor of Pennsylvania
The Capitol
Harrisburg, Pennsylvania

(b) Honorable William C. Sennett
Attorney General of Pennsylvania
The Capitol
Harrisburg, Pennsylvania

(c) Honorable Joseph H. Resnick
Assistant Attorney General of Pennsylvania
The Capitol
Harrisburg, Pennsylvania

(d) Honorable Michael Edelman
(c/o Hon. Joseph H. Resnick
Assistant Attorney General of Pennsylvania)
The Capitol
Harrisburg, Pennsylvania

2. State of New York

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Governor of the State of New York
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(b) Honorable Louis J. Lefkowitz
Attorney General of the State of New York
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4. Commonwealth of Virginia

(a) Honorable Mills E. Goodwin, Jr.
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(b) Honorable Robert Y. Button
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5. The Western Union Telegraph Company

(a) John M. Evans, Esq.
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The Western Union Telegraph Company
60 Hudson Street
New York, N. Y.

I further certify that a copy of this answer has also been served on each state not named as a party in this proceeding, in accordance with paragraph five of the complaint, by depositing same in a U. S. mail box addressed to the Attorney General of each of said states with air mail postage prepaid.

T. T. TURNBULL
Assistant Attorney General,
State of Florida

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969
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COMMONWEALTH OF PENNSYLVANIA,

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STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,

Defendants

BRIEF IN SUPPORT OF ANSWER BY THE DEFENDANT STATE OF FLORIDA

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STATEMENT OF THE CASE

This brief is in support of the defendant State of Florida's answer to the complaint filed by the Commonwealth of Pennsylvania against the States of New York, Florida, Oregon and Virginia and the Western Union Telegraph Company, a New York corporation. Art. III, Section 2, Const. U. S., U.S.C. Title 28, Sec. 1251(a)(1) and (b)(3).

The material facts admitted for the purpose of this litigation are that funds in excess of $1,500,000.00 are presently held by Western Union on account of money orders purchased from the company on or before December 31, 1962. Western Union's books and records show the State or place of destination, as well as the State or place of origin, of every money order, but in many cases the records do not show any other address for the sender, the sendee (payee of the money order), or any address for the payee of drafts which have been issued but never presented for payment, either to senders or sendees of a portion of the money order transactions involved.

The stated condition of the money orders when purchased (Complaint Exhibit A-1 and A-2) was that they "will be canceled and refund made to the sender if payment cannot be made within 72 hours [or other applicable period] after receipt at the paying office . . . ." The statistical studies cited by plaintiff indicate that in the case of the money orders for which Western Union still holds funds, the Company has not been able to make refund by delivery of money or payment of a draft to the sender, and the only step taken toward cancellation of the money order is by the routine message, between the Company's own offices of destination and origin, that payment has not been effected. Assuming that whatever evidence the Court will receive in this cause will substantiate this fact, the problem

presented appears to be that of an obligation by the Company accruing to a sendee either in the state of his residence shown on the Company's records, or in the state of destination for the money order if the paying office is the only address shown for the sendee on such records. Except in those instances when delivery of a draft to either sendee or sendor may be regarded as terminating the first obligation and substituting a new one, the money order transactions involved in this proceeding are those in which the right or duty of cancellation and refund to the sender cannot be accomplished.

Under Chapter 717, Florida Statutes, (see Exhibit "A" attached to answer) intangible and other property, held or owed in Florida, in the ordinary course of business, for fifteen years or more, is deemed abandoned and is subject to state custody under said Chapter 717, Florida Statutes. Properties are deemed abandoned at the expiration of the period prescribed under the laws of Florida after having been held or owed in the usual course of business to a resident of Florida.

This case involves unclaimed moneys held by Western Union for persons entitled thereto under money orders purchased from Western Union in Pennsylvania. However, the questions in the case relate to all unclaimed moneys held by Western Union arising from money orders purchased from the Company. Florida asserts that the sendee is the owner of moneys held by Western Union for such money orders, and that where the money order directed that the amount of the money order be paid to a sendee in Florida, and no draft has been subsequently issued covering those funds, this State is the only State entitled under its laws to the escheat or custody of the unclaimed moneys.

QUESTIONS PRESENTED BY PLAINTIFF

I. (Jurisdiction determined.)

II. Does *Texas v. New Jersey*, 379 U. S. 674, settle the question of which State will be allowed to escheat or take custody of unclaimed moneys arising from telegraphic money orders?

III. Should a rule be adopted that the only State entitled to the escheat or custody of unclaimed moneys arising from telegraphic money orders is the State of origin (State of purchase) of the money order?

SUMMARY OF ARGUMENT

As to Questions II and III:

The plaintiff Pennsylvania has succintly stated the positions of the parties: "Pennsylvania claims the right of escheat or custodial taking of these obligations as the State of origin of the telegraphic money orders; Florida and Oregon claim the right as the State of destination of the telegraphic money orders; Virginia claims where drafts have been issued in that State to the sendees of the money orders for the amount thereof. New York claims as the State of domicile of the Company."

With respect to the first question above stated, Florida would answer affirmatively, contending that the controversy in this case is governed by the decision in *Texas v. New Jersey*, 379 U. S. 674, because unpaid money orders are intangible property within the rule of this Court that such property is "subject to escheat only by the State of the last known address of the creditor, as shown by the debtor's books and records."

Application of that rule to the present controversy involves only the identification of the creditor and a determination of his last known address as shown by the debtor's records, if any. The destination or place specified for payment of a money order to the party named as payee, as to which Company records would appear to be invariably complete, provides a clear presumptive address for such payee when no conflicting or more specific address is shown for such payee on the debtor's records.

An equally clear and convenient basis for determining the second question above stated, the identity of the creditor in a money order transaction, may be provided by using the face of the money order itself, which constitutes a record identifying without question the party to whom the obligation is owed at the time the money order is issued. The condition with respect to refund does not in terms state a lapse or self-executing termination of the obligation to the payee, but instead requires affirmative action by the Company. In the transactions involved in this suit no refund or actual cancellation is effected, unless the issue and delivery of a draft to sendee or sendor supersedes and therefore terminates the obligation represented by a money order. The right of escheat in the State of the original payee-creditor's residence should otherwise accrue.

A rule in the present case is therefore proposed as follows: The funds in question in this case are subject to escheat or custodial taking only by the State of destination of a telegraphic money order when no other last known address for the payee is shown by the debtor's records, or by the State of last known residence of the payee of a draft issued in payment or refund of a money order as shown by the debtor's records.

ARGUMENT

II. Does *Texas v. New Jersey*, 379 U.S. 674, settle the question of which State will be allowed to escheat or take custody of unclaimed moneys arising from telegraphic money orders?

III. Should a rule be adopted that the only State entitled to the escheat or custody of unclaimed moneys arising from telegraphic money orders is the State of origin (State of purchase) of the money order?

The controlling language of this Court in *Texas v. New Jersey*, 379 U.S. 674, at pages 681-682, is as follows:

> "We therefore hold that each item of property in question in this case is subject to escheat only by the State of the last known address of the creditor, as shown by the debtor's books and records. This leaves questions as to what is to be done with property owed persons (1) as to whom there is no record of any address at all, or (2) whose last known address is in a State which does not provide for escheat . . . in both situations the State of corporate domicile should be allowed to cut off the claims of private persons only, retaining the property for itself only until some other State comes forward with proof that it has a superior right to escheat."

The rationale of the position urged by Florida as intervenor in *Texas v. New Jersey*, and adopted by the Court, 379 U.S. at p. 680-681, serves to emphasize the desirability of retaining the creditor-residence rule in the present controversy:

"The rule Florida suggests is that since a debt is property of the creditor, not of the debtor, fairness among the States requires that the right and power to escheat the debt should be accorded to the State of the creditor's last known address as shown by the debtor's books and records. Such a solution would be in line with one group of cases dealing with intangible property for other purposes in other areas of the law. Adoption of such a rule involves a factual issue simple and easy to resolve, and leaves no legal issue to be decided. It take account of the fact that if the creditor instead of perhaps leaving behind an uncashed check had negotiated the check and left behind the cash, this State would have been the sole possible escheat claimant; in other words, the rule recognizes that the debt was an asset of the creditor. The rule recommended by the Master will tend to distribute escheats among the States in the proportion of the commercial activities of their residents. And by using a standard of last known address, rather than technical legal concepts of residence and domicile, administration and application of escheat laws should be simplified. It may well be that some addresses left by vanished creditors will be in States other than those in which they lived at the time the obligation arose or at the time of the escheat. But such situations probably will be the exception, and any errors thus created, if indeed they could be called errors, probably will tend to a large extent to cancel each other out." Citing *N. Y. Life Ins. Co. v. Dunlevy*, 241 U. S. 518, 60 L. Ed. 1140, 36 S. Ct. 613; *Baldwin v. Missouri*, 281 U. S. 586, 74 L. Ed. 1056, 50 S. Ct. 436, 72 A. L. R. 1303; *Farmers Loan & Trust Co. v. Minnesota*, 280 U. S. 204, 74 L. Ed. 371, 50 S. Ct. 98, 65 A. L. R. 1000; *Blodgett v. Silberman*, 277 U. S. 1, 72 L.Ed. 749, 48 S. Ct. 410; *Harris v. Balk*, 198 U. S. 215, 49 L. Ed. 1023, 25 S. Ct. 625.

The present controversy does involve a further refinement of the principle enunciated in the Texas case, because of the nature of the money order obligations here involved. The purchase of a money order, however, clearly creates an obligation due and owing to the payee or sendee. The nature of that obligation was considered by this Court in *Western Union Telegraph Co. v. Pennsylvania*, 368 U. S. 71, 82 S. Ct. 199, 7 L. Ed. 2d 139.

The money order conditions reflected by the exhibits in this cause, including the provision for cancellation and refund to the sender, are of course an essential and integral part of the contract required by the tariff regulations filed by Western Union with federal regulatory authorities. These conditions fix the obligations of the parties. *Western Union Tel. Co. v. Priester*, 276 U. S. 252, 72 L. Ed. 555, 48 S. Ct. 234; *Western Union Tel. Co. v. Esteve Bros. & Co.*, 256 U. S. 566, 65 L. Ed. 1094, 41 S. Ct. 584.

In administering Chapter 717, F. S., however, Florida does not seek to determine rights between the money order sender and sendee which would be governed by the refund and cancellation provisions. The Florida statute appears similar in nature and operation to the California statute considered by this Court in *Security Savings Bank v. California*, 263 U.S. 282, 44 S. Ct. 108, 68 L. Ed. 301, 31 A.L.R. 391, in which this Court remarked "the state does not seek to enforce any claim against him (the depositor). It seeks to have the deposit transferred" to the State of California. In this type of proceeding the custody of the unclaimed or abandoned property is transferred from the custodian of the fund to the state, which will continue to hold the property in its custody, for the account of the person or persons entitled thereto.

In the case of the Florida statute, as well as those states which have adopted the Uniform Disposition of Unclaimed Property Act, the same being custodial acts and statutes, although the custody of the property is divested from the custodian thereof, such property is vested in the state, not as the owner of the entire title thereto, but as custodian or trustee for the person entitled thereto, that is its owner. In the case of those states having the escheat type statutes, not only is the custody of the property moved from the custodian to the state, but the title to the property, or the right thereto, is transferred to the state and the person entitled thereto, because of the escheat, is divested of his title to the fund, which escheat is under the terms of the statute binding on the heirs, personal representative and assigns of the said owner. Proceedings designed to escheat the property of nonresident creditors are questionable and do not divest the title of the creditor where there is no jurisdiction over the debt or obligation due him, or of him personally. Here the situs of the debt, not of the fund for its payment, is material and jurisdictional. Under the Uniform Act, including the Florida statute, the person entitled to the fund does not appear to be a necessary party to the custodial procedure, while under the escheat statutes he is a necessary party.

In further substantiation of Florida's contention that the state of destination shown on Company records should be accepted presumptively as the last known Company address of the money order payee, the primary creditor of Western Union as a fiduciary debtor, consideration should be given to an analogous rule as to presumption of continuing residence. The Supreme Court of Arizona in Re. Hull Copper Company (*Arizona v. Tally, Trustee*), 46 Ariz. 270, 50 P. 2d 560, 101 A. L. R. 664, had before it a claim by the State of Arizona to certain shares of stock issued by the Hull Copper Company, to purchasers of such stock, which corporation was being liqui-

dated and the owners of such shares of stock could not be located. These stockholders were stockholders of record, such record reflecting their names and addresses as of the date of issuance; however, their whereabouts were unknown as of the date of the liquidation and distribution of the assets of the corporation. This stock consisted of some six hundred shares of stock having a value of $46,309.20; which the State of Arizona claimed under its Sections 4304-4310, Revised Code, 1928, as being unclaimed by the remaining stockholders, who contended that it should be distributed to them in the ratio of their stock ownership. The stock in question appears to have been issued to stockholders with post office addresses or locations beyond the boundaries of the State of Arizona. In its opinion the said court said that "if the claim of the appellees (other stockholders) cannot be sustained, still less, we think, can that of the state, as set forth in its pleadings, be upheld. In the first place, the only evidence of the residence of these stockholders is that they were nonresidents of the State of Arizona. In such case, since the property in question was personal in its character, it would ordinarily follow the residence of the owner, and an escheat proceeding in this state would not lie."

In *Great Northern Railway Company v. Sutherland*, 273 U.S. 182, 47 S. Ct. 317, 71 L. Ed. 596, text 599 and 600, this Court stated that corporate "stock is presumed to be owned by the registered owner and that, where stock is stated to be held by the registered owner for another named person, the latter is presumed to own the whole beneficial interest." In *Finn v. Brown*, 142 U.S. 56, text 67, 12 S. Ct. 136, 35 L. Ed. 936, text 939, this Court said: "It is undoubtedly true, as contended by the defendant, that, as the 50 shares of stock were transferred to him originally without his knowledge and consent, he had a right to repudiate the transaction: but he is presumed to be the owner of the stock when his name appears upon the books of the bank as such owner, and the burden of proof is upon him to

show that he is in fact not the owner." To the same effect see also *Keyser v. Hitz*, 133 U. S. 138, text 148 and 149, 10 S. Ct. 290, 33 L. Ed. 531, text 537; *Whitney v. Butler*, 118 U. S. 655, text 660 and 661, 7 S. Ct. 63, 30 L. Ed. 266, text 268; *Webster v. Upton*, Trustee, 91 U. S. 65, text 72, 23 L. Ed. 384, text 388. In 31A C. J. S. 222-225, Section 124(1), it is said: "Proof of the existence at a particular time of a fact of a continuous nature gives rise to an inference, within logical limits, that it exists at a subsequent time . . . . [I]t will be inferred that a given fact or set of facts, the existence of which at a particular time is once established in evidence, continues to exist so long as such facts usually do exist . . . . Inferences of continuance are merely inferences of fact and may, therefore, be rebutted."

The last known place of residence of the creditor will, for the purposes of custody and escheat proceedings by a state, be presumed to continue until impeachment by competent evidence showing an actual change thereof by the said creditor.

CONCLUSION

The defendant State of Florida proposes a rule in substantially these terms:

> "The funds in question in this case are subject to escheat or custodial taking only by the State of destination of a telegraphic money order when no other last known address for the payee is shown by the debtor's records, or by the State of last known residence of the payee of a draft issued in payment or refund of a money order as shown by the debtor's records."

Reasoning and authorities in support of this rule necessarily exclude the conflicting arguments advanced by other parties to this cause. It is submitted that the rule proposed by Florida giving the right of custody to the State of destination of a telegraphic money order, in the absence of a more specific debtor record of the creditor's last known address, is a rule fully consistent with the principles established by this Court in *Texas v. New Jersey*.

Respectfully submitted,

EARL FAIRCLOTH
Attorney General of Florida

T. T. TURNBULL
Assistant Attorney General

WINIFRED L. WENTWORTH
Assistant Attorney General

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969
No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,

Defendants

PROOF OF SERVICE

I, T. T. TURNBULL, Assistant Attorney General of the State of Florida, hereby certify that I am one of the attorneys for the defendants, State of Florida, that I am a member of the Bar of the Supreme Court of the United States, and that on the 13 day of Aug, 1970, I served copies of the foregoing Brief in Support of the Answer, on each of the parties by depositing such copies, air mail postage prepaid, in a United States Post Office, addressed as follows:

1. State of Pennsylvania

   (a) Honorable Raymond P. Shafer
   Governor of Pennsylvania
   The Capitol
   Harrisburg, Pennsylvania

   (b) Honorable William C. Sennett
   Attorney General of Pennsylvania
   The Capitol
   Harrisburg, Pennsylvania

   (c) Honorable Joseph H. Resnick
   Assistant Attorney General of Pennsylvania
   The Capitol
   Harrisburg, Pennsylvania

   (d) Honorable Michael Edelman
   (c/o Hon. Joseph H. Resnick
   Assistant Attorney General of Pennsylvania)
   The Capitol
   Harrisburg, Pennsylvania

2. State of New York

   (a) Honorable Nelson A. Rockefeller
   Governor of the State of New York
   The Capitol
   Albany, New York

   (b) Honorable Louis J. Lefkowitz
   Attorney General of the State of New York
   The Capitol
   Albany, New York

3. State of Oregon

(a) Honorable Tom McCall
Governor of the State of Oregon
The Capitol
Salem, Oregon

(b) Honorable Lee Johnson
Attorney General of the State of Oregon
The Capitol
Salem, Oregon

4. Commonwealth of Virginia

(a) Honorable Mills E. Goodwin, Jr.
Governor of the Commonwealth of Virginia
The Capitol
Richmond, Virginia

(b) Honorable Robert Y. Button
Attorney General of the Commonwealth of Virginia
The Capitol
Richmond, Virginia

5. The Western Union Telegraph Company

(a) John M. Evans, Esq.
Vice-President and General Counsel
The Western Union Telegraph Company
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New York, N. Y.

(b) Peter F. Oates, Esq.
Assistant General Counsel
The Western Union Telegraph Company
60 Hudson Street
New York, N. Y.

I further certify that a copy of this brief has also been served on each state not named as a party in this proceeding, in accordance with paragraph five of the complaint, by depositing same in a U. S. mail box addressed to the Attorney General of each of said states with air mail postage prepaid.

T. T. TURNBULL
Assistant Attorney General
State of Florida

Supreme Court, U.S.
FILED
NOV 2 1970
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IN THE

SUPREME COURT OF THE UNITED STATES

Original Action No. 40

OCTOBER TERM, 1969

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff

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STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,
Defendants

MOTION OF THE STATE OF CALIFORNIA FOR LEAVE TO INTERVENE AS A PARTY PLAINTIFF

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printed in CALIFORNIA OFFICE OF STATE PRINTING

IN THE

SUPREME COURT OF THE UNITED STATES

Original Action No. 40

OCTOBER TERM, 1969

COMMONWEALTH OF PENNSYLVANIA,
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STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,
Defendants

MOTION OF THE STATE OF CALIFORNIA FOR LEAVE TO INTERVENE AS A PARTY PLAINTIFF

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The State of California respectfully represents as follows:

1. On or about March 30, 1970, the Commonwealth of Pennsylvania filed a Motion for Leave to File Complaint in the above Original Action, together with

a copy of the proposed Complaint and that leave to file was granted on or about June 15, 1970.

2. By the said Complaint the plaintiff averred, inter alia, as follows:

> That the Western Union Telegraph Company, defendant, is a New York corporation, and that as part of its business it is engaged in the telegraphic money order business;
>
> That in such telegraphic money order business the company receives moneys from purchasers of telegraphic money orders in one State for transmission of the amount of the money orders to other persons, either in the same State or in other States;
>
> That by the terms of the telegraphic money orders, it is provided that if payment of the amount of the telegraphic money order is not effected within the time therein specified (in most cases 72 hours, or other cases 5 days or 10 days) the telegraphic money order will be cancelled, and the moneys returned to the sender of the telegraphic money order;
>
> That in many cases, payment has not been effected within the time specified;
>
> That in approximately 20% of the cases in which payment has not been effected, the company issued its draft for the amount of the telegraphic money order, either to the sendee, the person to whom the telegraphic money order was destined, or to the sender of the telegraphic money order, but that such drafts, whether issued to the sendee for the amount of the telegraphic money order, or to the sender for the amount to be returned to him, have not been presented or paid;

That in 80% of the cases in which the payment to the sendee of the amount of the telegraphic money was not effected and the telegraphic money order was cancelled and Western Union was unable to make refund to the sender of the telegraphic money order, and that in such 80%, no drafts were issued either to sendee or to sender;

That Western Union holds approximately $1,500,000.00 received by it for telegraphic money orders issued by the company prior to December 31, 1962, as to which payment to the sendee has not been effected and refund has not been made to the sender;

That of the said sum of approximately $1,500,000.00 so held by Western Union approximately $100,000.00 was received by Western Union for telegraphic money orders issued by the company to purchasers in Pennsylvania;

That under the laws of the Commonwealth of Pennsylvania, the persons entitled to the money held by Western Union on account of telegraphic money orders purchased in Pennsylvania are the senders of the money orders;

That under the laws of the Commonwealth of Pennsylvania, where such moneys received by Western Union for telegraphic money orders issued to purchasers in Pennslyvania have been unclaimed, or the whereabouts of the persons entitled have been unknown for the period of seven years, the said moneys are subject to escheat or custodial taking by the Commonwealth of Pennsylvania;

That the said sum of approximately $100,000.00 so held by Western Union on account of money orders purchased in Pennsylvania has been un-

claimed or the whereabouts of the persons entitled have been unknown for the period of seven years;

That the Commonwealth of Pennsylvania claims that it is entitled to the escheat or custody of the said sum of approximately $100,000.00 held by Western Union, as aforesaid;

That the State of New York, defendant, claims that as the State of Domicile of the obligor, Western Union, it is the State entitled to the escheat or custody of the entire sum of approximately $1,500,000.00 held by Western Union as aforesaid;

That there is therefore a controversy between Pennsylvania and New York as to the sum of approximately $100,000.00 held by Western Union, as aforesaid;

That as to the said sum of $100,000.00 received by Western Union for money orders issued by Western Union for money orders purchased in Pennsylvania, other States claim the right to the escheat or custody of such portions thereof as were destined to sendees in such other States, or as to which drafts were issued to the sendees in such other States;

That as to such portions of the sum of $100,000.00 held by Western Union arising out of telegraphic money orders issued to purchasers in Pennsylvania and destined to sendees in other States there is a controversy not only between Pennsylvania and New York, but also between such five States and the State to which the telegraphic money orders were destined;

That a similar controversy or controversies may exist as other portions of the said sum of $1,500,-

000.00 held by Western Union arising out of telegraphic money orders issued by Western Union to purchasers in States other than Pennsylvania;

That it is necessary that a rule be declared determining which of the several States has the paramount right to the escheat or custody of the money so held by Western Union;

That Pennsylvania believes that the rule which is fair and equitable and most consonant with the nature of telegraphic money order transactions, is that the State in which the telegraphic money order was issued is the State which has such paramount right.

3. That the State of California is a party in interest, because many telegraphic money orders issued by Western Union have been issued to purchasers in this State, and Western Union holds moneys received for telegraphic money orders issued by Western Union to purchasers in this State or to which payment has not been effected, and the moneys received by Western Union for such telegraphic money orders have been unclaimed and upon information and belief total approximately $100,000.00.

4. That the State of California believes that the rule submitted by the Commonwealth of Pennsylvania—that the State in which telegraphic money orders have been issued by Western Union to purchasers is the State entitled to the escheat or custody of the unclaimed amounts held by Western Union on account of such telegraphic money orders—is fair and equitable.

WHEREFORE, the State of California prays that it be granted leave to Intervene as a party plaintiff in the within proceedings and to file a Complaint herein.

THOMAS C. LYNCH
Attorney General
State of California

JAY L. SHAVELSON
Assistant Attorney General

WILLIAM J. POWER
Deputy Attorney General
Attorneys for the
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500 Wells Fargo Bank Building
Fifth Street and Capitol Mall
Sacramento, California 95814

October __, 1970

IN THE

SUPREME COURT OF THE UNITED STATES

Original Action No. 40

OCTOBER TERM, 1969

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,
Defendants

PROOF OF SERVICE

I, JAY L. SHAVELSON, Assistant Attorney General of the State of California, hereby certify that I am one of the attorneys for the movant, State of California, that I am a member of the Bar of the Supreme Court of the United States, and that on the ____ day of ----------, 1970, I served copies of the foregoing Motion of the State of California for Leave to Intervene as a Party Plaintiff, on the plain-

tiff, Commonwealth of Pennsylvania, on each of the parties defendant and the State of Connecticut by depositing such copies, air mail postage prepaid, in a United States Post Office, addressed as follows:

1. Commonwealth of Pennsylvania

   (a) Hon. Raymond P. Shafer
   Governor of the Commonwealth of Pennsylvania
   Harrisburg, Pennsylvania

   (b) Hon. William C. Sennett
   Attorney General of the Commonwealth of Pennsylvania
   Harrisburg, Pennsylvania

2. State of New York

   (a) Hon. Nelson A. Rockefeller
   Governor of the State of New York
   Albany, New York

   (b) Hon. Louis J. Lefkowitz
   Attorney General of the State of New York
   Albany, New York

3. State of Florida

   (a) Hon. Claude R. Kirk, Jr.
   Governor of the State of Florida
   Tallahassee, Florida

   (b) Hon. Earl Faircloth
   Attorney General of the State of Florida
   Tallahassee, Florida

4. State of Oregon

   (a) Hon. Tom McCall
   Governor of the State of Oregon
   Salem, Oregon

   (b) Hon. Lee Johnson
   Attorney General of the State of Oregon
   Salem, Oregon

5. Commonwealth of Virginia

   (a) Hon. Mills E. Goodwin, Jr.
   Governor of the Commonwealth of Virginia
   Richmond, Virginia

   (b) Hon. Robert Y. Button
   Attorney General of the Commonwealth of Virginia
   Richmond, Virginia

6. State of Connecticut

   (a) Hon. John Dempsey
   Governor of the State of ~~Connecticut~~
   Hartford, Connecticut

   (b) Hon. Robert K. Killian
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7. The Western Union Telegraph Company

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JAY L. SHAVELSON
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IN THE

Supreme Court of The United States

OCTOBER TERM, 1969

NO. 40 ORIGINAL

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff,

vs.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,
Defendants.

MOTION OF THE STATE OF INDIANA FOR LEAVE TO INTERVENE AS A PARTY PLAINTIFF

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IN THE

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OCTOBER TERM, 1969

NO. 40 ORIGINAL

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

vs.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,

Defendants.

MOTION OF THE STATE OF INDIANA FOR LEAVE TO INTERVENE AS A PARTY PLAINTIFF

TO: THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

The State of Indiana respectfully moves this Court for leave to intervene as a plaintiff in this cause:

1. On or about March 30, 1970, the Commonwealth of Pennsylvania filed its "Motion for Leave to File Complaint and Complaint" in the above captioned original action.

2. The complaint named as parties defendants the states of New York, Florida, Oregon, Virginia, and the Western Union Telegraph Company.

3. By its complaint, plaintiff, the Commonwealth of Pennsylvania averred inter alia:

The plaintiff and the states named as parties defendants are states of the United States.

The defendant, the Western Union Telegraph Company, hereafter referred to as "Western Union," is a corporation organized and existing under the laws of the State of New York with its principal place of business located in New York, New York.

Western Union is engaged in the transmission of telegraphic money orders. In the conduct of its operations, it receives money from a sendor for transmission to a sendee. In the conduct of such operations situations arise where, due to no fault of the corporation, payment cannot be made to the sendee nor can refund be made to the sendor according to the contract on the back of the money order form or, when payment or refund is made by draft, such draft remains oustanding after seven years. When neither payment to the sendee by cash or draft nor refund to the sendor by cash or draft can be made or when such drafts remain outstanding, a controvery exists as to which state is entitled to the funds held by Western Union, when such circumstances occur.

Western Union holds more than $1,500,000.00 in accumulated monies subject to this controversy.

By virtue of a decision of a court of their State, the Commonwealth of Pennsylvania claims entitlement to the escheat or custody of unclaimed moneys held by Western

Union for seven years when Pennsylvania is the state of origin of such purchased telegraphic money orders.

4. The State of Indiana asserts that by virtue of its statutes it is entitled to custodial taking or escheat of such monies held by Western Union under the following rules:

(1) After seven years:

(a) If, according to the term of the contract on the back of the money order, neither payment to the sendee by cash or draft nor refund to the sendor by cash or draft can be effectuated, then the state entitled to escheat or custodial taking is the state from which the money order originated.

(b) If, a draft for payment to the sendee or refund to the sendor remains outstanding, then the state entitled to escheat or custodial taking of the money owing thereon is the state where the draft was issued; provided that if the payee of the draft has a last known address which is outside the state where the draft was issued, then the state of such address is entitled to escheat or custodial taking.

(2) No State under custom, usage or color of state law can subvert the foregoing rules by claiming to be a trustee for the sendee unless so intended by the sendor.

(3) The foregoing rules are to be applied retroactively without time limitation.

5. The State of Indiana believes that the foregoing rules for distribution are the most equitable.

6. The foregoing rules are within the ambit of the declaratory judgment prayed for by the Commonwealth of Pennsylvania.

7. A controversy exists between Indiana and all defendants opposed to the application of the foregoing rules of distribution.

8. The State of Indiana believes that no party heretofore joined or having intervened in this action can protect the interests of the State of Indiana.

WHEREFORE, the State of Indiana prays for leave to intervene in this action as a party plaintiff.

Respectfully submitted

THEODORE L. SENDAK,
Attorney General of Indiana

WILLIAM F. THOMPSON,
Assistant Attorney General

ROBERT A. ZABAN
Deputy Attorney General

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SUPREME COURT, U. S.

Supreme Court, U.S.
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E. ROBERT SEAVER, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,

Defendants

MOTION TO INTERVENE AS DEFENDANT (STATE OF ARIZONA)

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LEONARD M. BELL
Of Counsel

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,

Defendants

MOTION TO INTERVENE AS DEFENDANT (STATE OF ARIZONA)

GARY K. NELSON
Attorney General
of Arizona
159 State Capitol Building
Phoenix, Arizona 85007

LEONARD M. BELL
Of Counsel

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

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COMMONWEALTH OF PENNSYLVANIA,

Plaintiff

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,

Defendants

MOTION TO INTERVENE AS DEFENDANT (STATE OF ARIZONA)

The State of Arizona moves for leave to intervene as defendant in this action, in order to assert the defenses set forth in its proposed answer, a copy of which is attached hereto, on the grounds that the

State of Arizona is entitled to a portion of money orders purchased from defendant Western Union Telegraph Company on or before December, 1962, for which payment had not been effected under the Uniform Disposition of Unclaimed Property Act of Arizona, that the resolution of this action may have an effect as to the amount the State of Arizona would receive of the funds held by Western Union Telegraph Company and as such the State of Arizona has a defense to plaintiff's claim which is similar or identical to the defense of defendant State of Florida and which is common to the main action.

GARY K. NELSON
Attorney General
of Arizona

LEONARD M. BELL
Of Counsel

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,

Defendants

ANSWER
(STATE OF ARIZONA)

The State of Arizona, a sovereign state of the United States of America, by and through its Attorney General, for its answer to the complaint herein, says:

I.

It admits the allegations of fact in paragraph numbered I.

II.

It admits the allegations of fact in paragraph numbered II but controverts the conclusion in subparagraphs 9(f), 12 and 15 that cancellation of a money order is legally accomplished "by the paying office notifying the sending office that payment has not effected."

III.

It is without actual knowledge of the matters of fact alleged in paragraph numbered III of the complaint, but for the purposes of this litigation they are admitted except insofar as they assume an effective cancellation of money orders by

notice as noted in paragraph II of this answer.

IV.

It is without actual knowledge of the matters of fact alleged in paragraph numbered IV of the complaint, but for the purposes of this litigation they are admitted.

V.

The State of Arizona, for the purposes of its claim to the properties in question hereby adopts and repeats the allegations of fact of the plaintiff in its complaint herein insofar as the same may be applied to the rights and interests of the State of Arizona in the disposition of the issues of law raised by the complaint, based on facts therein alleged, as to the situs of the unclaimed intangible personal property described.

VI.

The Estate Tax Commissioner of the State of Arizona is charged with the administration of the Arizona Unclaimed Property Statutes, Title 44, Chapter 3.1, Arizona Revised Statutes, attached hereto as Exhibit A, enacted without subsequent amendment as Chapter 126, Section 1, Laws of Arizona 1956, in a form substantially the same as the Uniform Disposition of Unclaimed Property Act approved by the National Conference on Uniform Laws in 1955. Under this law Arizona claims it is entitled to the custody of unclaimed funds represented by the money orders in question which were sent to an Arizona destination, or those sent to a payee whose last known address shown by the books of the debtor is in Arizona, because the

right of escheat vests in the state having jurisdiction of the payee or obligee in such transactions.

WHEREFORE, the State of Arizona prays:

(1) That this Court take jurisdiction of the parties and subject matter herein;

(2) That a temporary injunction be issued restraining the defendant, The Western Union Telegraph Company, from paying, delivering, or in any manner relinquishing, the said property to any other State pending further orders of this Court;

(3) That judgment be entered that the moneys held by Western Union are subject to the escheat or custody of one or more of the following States:

(a) The State of destination of the money orders, as shown by the books and records of Western Union;

(b) The State in which a draft has been issued for the amount of the money order or the amount of the refund, as shown by the books and records of Western Union;

(c) The State of last known address of the sender of a money order, as shown by the books and records of Western Union;

(d) The State of the last known address of the payee of a draft, as shown by the books and records of Western Union;

(4) That such judgment decree that no State other than the State or States designated under (3) above has the power to escheat or custody of, or the right to prosecute a claim of escheat or custody

against, such property.

(5) That the State of Arizona have such other and further relief as this Court may deem just.

GARY K. NELSON
Attorney General
of Arizona

LEONARD M. BELL
Of Counsel

UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

ARTICLE 1. IN GENERAL

44-351. Definitions and use of terms

In this chapter, unless the context otherwise requires:

1. "Banking organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, or a private banker engaged in business in this state.

2. "Business association" means any corporation other than a public corporation, joint stock company, business trust, partnership, or any association for business purposes of two or more individuals.

3. "Commissioner" means estate tax commissioner.

4. "Financial organization" means any savings and loan association, building and loan association, credit union, cooperative bank or investment company, engaged in business in this state.

5. "Holder" means any person in possession of property subject to this chapter belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this chapter.

6. "Life insurance corporation" means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

7. "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this chapter, or his legal representative.

8. "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

9. "Utility" means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam or gas.

44-352. Property held by banking or financial organizations

The following property held or owing by a banking or financial organization is presumed abandoned:

1. Any demand, savings, or matured time deposit made in this state with a banking organization, together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, unless the owner has, within seven years, increased or decreased the amount of deposit.

2. Any funds paid in this state toward the purchase of shares or other interest in a financial organization in this state and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has within seven years:

(a) Increased or decreased the amount of the funds or presented an appropriate record for the crediting of interest or dividends; or

(b) Corresponded in writing with the financial organization concerning the funds; or

(c) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization.

3. Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than seven years from the date on which the lease or rental period expired.

44-353. Unclaimed funds held by life insurance corporations.

A. "Unclaimed funds", as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

B. "Unclaimed funds", as used in this section, means all monies held and owing by any life insurance corporation unclaimed and unpaid for more than seven years after the monies become due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding seven years assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or corresponded in writing with the life insurance corporation concerning the policy. Monies otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

44-354. Deposits and refunds held by utilities

The following funds held or owing by any utility are presumed abandoned:

1. Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven years after the termination of the services for which the deposit or advance payment was made.

2. Any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven years after the date it became payable in accordance with the final determination or order providing for the refund.

44-355. Undistributed dividends and distributions of business associations

Any stock certificate or other certificate of ownership, or any dividend, profit, distribution, interest, payment on principal, or other sum for which a negotiable instrument has not been issued and delivered in payment held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative, who has not claimed it, or corresponded in writing with the business association concerning it, within seven years after the date prescribed for payment or delivery, is presumed abandoned if:

1. It is held or owing by a business association organized under the laws of or created in this state; or

2. It is held or owing by a business association doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state.

44-356. Property of business associations and banking or financial organizations held in course of dissolution

All intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization, or financial organization organized under the laws of or created in this state, that is unclaimed by the owner within two years after the date for final distribution, is presumed abandoned.

44-357. Property held by fiduciaries

All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within seven years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary:

1. If the property is held by a banking organization or a financial organization, or by a business association organized under the laws of or created in this state; or

2. If it is held by a business association, doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state; or

3. If it is held in this state by any other person.

44-358. Property held by state courts and public officers and agencies

All personal property, tangible or intangible, held for the owner by any court, public corporation, public authority, or public officer of this state, or a political subdivision thereof, that has remained unclaimed by the owner for more than seven years is presumed abandoned.

44-359. Miscellaneous personal property held for another person

All personal property, tangible or intangible, not otherwise covered by this chapter, including any income or increment thereon and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than seven years after it became payable or distributable is presumed abandoned.

44-360. Reciprocity for property presumed abandoned or escheated under the laws of another state

If specific property which is subject to the provisions of sections 44-352, 44-355, 44-356, 44-357 and 44-359 is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to this chapter if:

1. It may be claimed as abandoned or escheated under the laws of such other state; and

2. The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state.

44-361. Report of abandoned property

A. Every person holding funds or other property, tangible or intangible, presumed abandoned under this chapter shall report to the commissioner with respect to the property not previously reported as hereinafter provided.

B. The report shall be verified and shall include:

1. The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of five dollars or more presumed abandoned under this chapter;

2. In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his last known address according to the life insurance corporation's records;

3. The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under five dollars each may be reported in aggregate;

4. The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property.

C. If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

D. The report shall be filed before November 1 of each year as of June 30 next preceding, but the report of life insurance corporations shall be filed before May 1 of each year as of December 31 next preceding. The commissioner may postpone the reporting date upon written request by any person required to file a report.

E. Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

F. The initial report filed under this chapter shall include all items of property that would have been presumed abandoned if this chapter had been in effect during the seven-year period preceding its effective date and provided that no items of a value of twenty-five dollars or less shall be included in such initial report.

44-362. Notice and publication of lists of abandoned property

A. Within one hundred twenty days from the filing of the report required by section 44-361, the commissioner shall cause notice to be published at least once each week for two successive weeks in an English language newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abondoned property has his principal place of business within this state.

B. The published notice shall be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property," and shall contain:

1. The names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified.

2. A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the commissioner.

3. A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within sixty-five days from the date of the second published notice, the abandoned property will be placed not later than eighty-five days after such publication date in the custody of the commissioner to whom all further claims must thereafter be directed.

C. The commissioner is not required to publish in such notice any item of less than twenty-five dollars unless he deems such publication to be in the public interest.

D. Within one hundred twenty days from the receipt of the report required by section 44-361, the commissioner shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars or more presumed abandoned under this chapter. The mailed notice shall contain:

1. A statement that, according to a report filed with the commissioner, property is being held to which the addressee appears entitled.

2. The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

3. A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the commissioner to whom all further claims must be directed.

44-363. Payment or delivery of abandoned property

Every person who has filed a report as provided by section 44-361 shall within twenty days after the time specified in section 44-362 for claiming the property from the holder pay or deliver to the commissioner all abandoned property specified in the report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in section 44-362, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the commissioner, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

44-364. Relief from liability by payment or delivery

The payment of money or the delivery of property to the commissioner by any holder shall terminate any legal relationship between the holder and the owner and shall release and discharge such holder from any and all liability to the owner, his heirs or assigns by reason of such delivery or payment, and such delivery and payment may be pleaded as a bar to recovery and be a conclusive defense in any suit or action brought by such owner, his heirs or assigns or any claimant against the holder by reason of such delivery. The state shall reimburse any holder who cannot be relieved of such liability by this section for all liability to the owner, his heirs and assigns incurred by reason of compliance with this chapter, but nothing contained in this section shall be deemed or construed as an assumption by the state or the commissioner of any liability of the holder to the owner upon a cause of action arising prior to said delivery, nor as depriving such owner, his heirs or assigns of the right of redemption provided for in this chapter.

44-365. Income accruing after payment or delivery

When property is paid or delivered to the commissioner under this chapter, the owner is not entitled to receive income or other increments accruing thereafter.

44-365.01. Periods of limitation not a bar

The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this chapter or to pay or deliver abandoned property to the commissioner. Added Laws 1959, Ch. 23, 1.

44-366. Sale of abandoned property

A. All abandoned property other than money delivered to the commissioner under this chapter shall within one year after delivery be sold by him to the highest bidder at public sale in whatever city in the state affords in his judgment the most favorable market for the property involved. The commissioner may decline the highest bid and reoffer the property for sale if he considers the price bid insufficient. He need not offer any property for sale if, in his opinion, the probable cost of sale exceeds the value of the property.

B. Any sale held under this section shall be preceded by a single publication of notice thereof, at least three weeks in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold.

C. The purchaser at any sale conducted by the commissioner pursuant to this chapter shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The commissioner shall execute all documents necessary to complete the transfer of title.

44-367. Deposit of funds

A. All funds received under this chapter, excepting funds provided for by section 8, article 11, constitution of Arizona, but including the proceeds from the sale of abandoned property under § 44-366, shall forthwith be deposited with the state treasurer to be credited to a clearing account from which he shall make prompt payment of claims duly allowed by him as hereinafter provided. Before making the deposit he shall record the name and last know address of each person appearing

from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours. The funds remaining in the clearing account shall be credited to the general fund of the state at the end of each fiscal year unless the constitution or some other law specifically provides otherwise for the disposition of the particular proceeds.

B. Before making any deposit to the credit of the general fund or other fund, the commissioner may deduct:

1. Any costs in connection with sale of abandoned property,

2. Any costs of mailing and publication in connection with any abandoned property, and

3. Reasonable service charges. As amended Laws 1959, Ch. 24, § 1.

44-368. Claim for abandoned property paid or delivered

Any person claiming an interest in any property delivered to the state under this chapter may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the commissioner.

44-369. Determination of claims

A. The commissioner shall consider any claim filed under this chapter and may hold a hearing and receive evidence concerning it. If a hearing is held, he shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him and the reasons for his decision. The decision shall be a public record.

B. If the claim is allowed, the commissioner shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

44-370. Judicial action upon determinations

Any person aggrieved by a decision of the commissioner or as to whose claim the commissioner has failed to act within ninety days after the filing of the claim, may commence an action in the superior court to establish his claim. The proceeding shall be brought within ninety days after the decision of the commissioner or within one hundred eighty days from the filing of the claim if the commissioner fails to act.

44-371. Election to take payment or delivery

The commissioner, after receiving reports of property deemed abandoned pursuant to this chapter, may decline to receive any property reported which he deems to have a value less than the cost of giving notice and holding sale, or he may, if he deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates. Unless the holder of the property is notified to the contrary within one hundred twenty days after filing the report required under section 44-361, the commissioner shall be deemed to have elected to receive the custody of the property.

44-372. Examination of records

A. The commissioner may at reasonable times and upon reasonable notice examine the records of any person that relate to property that has been reported pursuant to this chapter.

B. If any person refuses to permit the commissioner to examine such records, the commissioner may request the attorney general to commence an action in the superior court to enforce the examination.

44-373. Proceeding to compel delivery of abandoned property.

If any person refuses to deliver property to the commissioner as required under this chapter, he shall request the attorney general to bring an action in the superior court to enforce such delivery.

44-374. Penalties

A. Any person who wilfully fails to render any report or perform other duties required under this chapter shall be punished by a fine of not less than twenty-five nor more than three hundred dollars.

B. Any person who wilfully refuses to pay or deliver abandoned property to the commissioner as required under this chapter shall be punished by a fine of not less than twenty-five dollars nor more than one thousand dollars, or imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

44-375. Division of unclaimed property; rules and regulations

A. There shall be a division of unclaimed property which shall be administered by the estate tax commissioner. The commissioner together with the assistant estate tax commissioner shall administer this chapter.

B. The commissioner is hereby authorized to make necessary rules and regulations to carry out the provisions of this chapter.

44-376. Effect of laws of other states; certain funds exempted

A. This chapter shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to the effective date of this chapter.

B. All funds the disposition of which is provided for under the terms of section 8, article 11, of the constitution of Arizona, shall be exempt from the provisions of section 44-367, and shall be deposited, when collected under the provisions of this chapter or otherwise, in the permanent school fund.

44-377. Uniformity of interpretation

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

44-378. Short title

This chapter may be cited as the Uniform Disposition of Unclaimed Property Act.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,

Defendants

BRIEF IN SUPPORT OF ANSWER BY STATE OF ARIZONA

GARY K. NELSON
Attorney General
of Arizona
159 State Capitol Building
Phoenix, Arizona 85007

LEONARD M. BELL
Of Counsel

STATEMENT OF POSITION
OF STATE OF ARIZONA

The State of Arizona by its adoption of the Uniform Disposition of Unclaimed Property Act in a form substantially the same as approved by The National Conference on Uniform Laws, has a defense which is similar or identical to that of defendant, The State of Florida. Therefore, the State of Arizona adopts for its brief in support of its answer the brief filed by the State of Florida in support of its answer.

GARY K. NELSON
Attorney General
of Arizona

LEONARD M. BELL
Of Counsel

IN THE

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COMMONWEALTH OF PENNSYLVANIA,

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Defendants

PROOF OF SERVICE

I, GARY K. NELSON, Attorney General of the State of Arizona, hereby certify that I am the attorney for the State of Arizona, that I am a member of the Bar of the Supreme Court of the United States,

and that on the day of , 1970, I served copies of the foregoing Motion to Intervene as Defendant, Proposed Answer and Brief in Support of the Answer, on each of the parties by depositing such copies, air mail postage prepaid, in a United States Post Office, addressed as follows:

1. State of Pennsylvania

The Honorable William C. Sennett
Attorney General of Pennsylvania
The Capitol
Harrisburg, Pennsylvania

2. State of New York

The Honorable Louis J. Lefkowitz
Attorney General of the State of New York
The Capitol
Albany, New York

3. State of Oregon

The Honorable Lee Johnson
Attorney General of the State of Oregon
The Capitol
Salem, Oregon

4. Commonwealth of Virginia

The Honorable Robert Y. Button
Attorney General of the Commonwealth
of Virginia
The Capitol
Richmond, Virginia

5. State of Florida

The Honorable Earl Faircloth
Attorney General of the State of
Florida
Tallahassee, Florida

6. The Western Union Telegraph Company

John M. Evans, Esq.
Vice-President and General Counsel
The Western Union Telegraph Company
60 Hudson Street
New York, N. Y.

GARY K. NELSON
Attorney General
of Arizona

SUPREME COURT, U. S.
FILED
FEB 8 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA, et al.,

Plaintiffs,

v.

STATE OF NEW YORK, et al.,

Defendants.

REPORT OF SPECIAL MASTER ON APPLICATIONS OF THE STATES OF CALIFORNIA, ARIZONA, AND INDIANA FOR LEAVE TO INTERVENE

John F. Davis,

Special Master

Washington, D. C. · THIEL PRESS · 202 · 393-0625

IN THE

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COMMONWEALTH OF PENNSYLVANIA, et al.,

Plaintiffs,

v.

STATE OF NEW YORK, et al.,

Defendants.

REPORT OF SPECIAL MASTER ON APPLICATIONS OF THE STATES OF CALIFORNIA, ARIZONA, AND INDIANA FOR LEAVE TO INTERVENE

By order of the Court dated October 12, 1970, the undersigned was appointed Special Master in the above entitled matter. By orders of November 23, 1970, and January 25, 1971, the Court referred to the Special Master, petitions for leave to intervene as parties plaintiff by the States of California and Indiana and as a party defendant by the State of Arizona. Pursuant to the aforesaid orders the Special Master submits the following report.

FACTS

So far as is necessary for the disposition of these motions, the complaint and answers make it appear that The Western Union Telegraph Company, a New York Corporation, holds material amounts of money received by it for the transmission of telegraphic money orders which for one reason or another aborted. The amount involved is not now established, but it appears to be in the neighborhood of $1,500,000 for orders purchased on or before December 31, 1962. That date was used in Pennsylvania's complaint because it fits with the seven year period fixed in its escheat statute (Penn. Act of May 2, 1889, P.L. 66, Sec. 1, as amended by Act of July 29, 1953, P.L. 986, Sec. 1). Apparently most of this $1,500,000, estimated in one survey at 78.1%, consisted of orders as to which the payees could not be found and the amounts were therefore to be refunded to the senders, but they also could not be found. The survey indicated that of the remaining 21.9% about half constituted drafts issued to the payees which were not submitted for payment and the remainder of refund drafts to the senders which also were not cashed.

Pennsylvania alleged that of the total of $1,500,000, about $100,000 resulted from purchases of telegraphic money orders in Pennsylvania and that under its escheat law Pennsylvania is entitled to all of that sum. It asserts that there are conflicting claims by Florida, Oregon, Virginia, and New York and, inferentially, by other states. Pennsylvania asked the Court to issue an injunction barring escheat by the states named as defendants and restraining Western Union from releasing the money to them pending further orders of the Court and prayed for what appears to the Special Master to be in the nature of a declaratory judgment spelling out the legal rights of the parties. None of the defendants opposed Pennsylvania's motion for leave to file the complaint and on June 15, 1970, the Court granted the motion. No action has been taken on the request for an

injunction, which New York said was not necessary since it did not intend to institute any such action.

The State of Connecticut filed a motion for leave to intervene as a party plaintiff, alleging that approximately $100,000 of the money orders in issue had been purchased in Connecticut and that as to that amount it was fair and equitable that the money escheat to Connecticut as against the claims of the defendant states. The Court granted this motion on October 12, 1970, but Connecticut has not yet filed a complaint.

Each of the defendant states, Florida, New York, Oregon and Virginia, filed an answer to the complaint, asserting claims to the money involved conflicting with the claim of Pennsylvania, and, in some instances, conflicting with each other. The Western Union Telegraph Company filed an answer denying sufficient knowledge or information to form a belief as to the correctness of the figures contained in the complaint, but, in effect, admitting the existance of the conflicting claims.

PETITIONS TO INTERVENE

The motion of the State of California for leave to intervene as a party plaintiff, which has been referred to the Special Master for his recommendation, is substantially the same as the motion submitted by Connecticut and granted by the Court. California asserts that of the money in dispute approximately $100,000 originated in the purchase of telegraphic money orders in California and that it is fair and equitable that that sum escheat to California as against the claims of other States.

The State of Indiana's motion for leave to intervene as a party plaintiff alleges that under its statutes it is entitled to custodial taking or escheat of money received for money orders originating in Indiana when payment has not been made by cash or draft to the sendee, or a refund made by cash or draft to the sender. In cases where drafts have been

issued, its statutes entitle it to the money where the address of the payee on the draft is in Indiana or, if there is no last known address of such payee, where the draft was issued in Indiana. Indiana asserts that its claim is "within the ambit of the declaratory judgment prayed for by the Commonwealth of Pennsylvania." It asserts that a controversy exists between Indiana and all of the defendants opposed to the distribution provided by its statutes and that no party heretofore joined or having intervened can protect Indiana's interest.

The motion of the State of Arizona to intervene as a party defendant submits a proposed answer to the complaint to be filed if its motion is granted. From this answer it appears that the governing statute in Arizona is said to be substantially the same as the Uniform Disposition of Unclaimed Property Act approved by the National Conference on Uniform Laws in 1955. Under that law Arizona claims the funds represented by money orders sent to an Arizona destination or those sent to a payee whose last known address shown by the books of the debtor is in Arizona. Arizona states that its position is similar or identical to that of Florida which also has the uniform law.

With minor exceptions, each of the parties to this proceeding has stated that it has no objection to the requested interventions.[1]

RECOMMENDATION OF THE SPECIAL MASTER

The Special Master recommends that each of the motions for leave to intervene be granted. It seems clear that the same type of controversy exists between these three states and the states claiming in opposition to them as existed between the original parties to the case. The position of

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[1]The files of the Special Master do not show that Oregon has taken a position with respect to the motions of Arizona or Indiana, or that Connecticut has taken a position on Arizona's motion or Pennsylvania on Indiana's.

California is the same as that of Connecticut whose motion for leave to intervene was granted by the Court. The position of Arizona appears to be the same as that of Florida. Although the position of Indiana differs somewhat from each of the others, the presence of real controversy seems clear.

It may well be that each of the other forty-one states not appearing in this proceeding also have an interest, large or small, in the outcome. Presumably most of them are willing to leave the matter to the determination of the Court on the basis of the representations of their sister states. However, if some of them desire to intervene at this time, it does not seem to the Special Master necessary that the proceedings before him be delayed to await action on such applications. Unless instructed to the contrary, the Special Master will proceed to hear the present parties and the present intervenors, if their motions are granted. He will, of course, be receptive to the views of other States as *amici curiae*.

It is recommended that the motions for leave to intervene of the States of California, Arizona and Indiana be granted.

Respectfully submitted,

John F. Davis
Special Master

February, 1971

Supreme Court, U.S.
FILED
APR 22 1971
E. ROBERT SEAVER

IN THE

Supreme Court of the United States

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Defendants.

OBJECTIONS OF NEW YORK TO MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

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IN THE

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OCTOBER TERM, 1970
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STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,

Defendants.

OBJECTIONS OF NEW YORK TO MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Respondent, the State of New York, hereby files objection to the motion by the American Express Company for leave to file a brief amicus curiae. Respondent's objection is based upon the following grounds:

1. American Express Company acknowledges that it is seeking a determination which would apply equally to its holdings of abandoned or escheated property. To support this purpose, it has submitted a unilateral statement of facts respecting its travelers checks and money orders. This is in sharp contrast to the extensive and carefully considered agreed statement of facts to which all parties in this action are or will be participants. Although American Express Company disavows an intention to become a party defendant or to have its instruments placed

directly in adjudication, this is the inescapable and ultimate effect of its application. It would be a party defendant in all but name, with the anomalous result that it could present its factual statement and factual discussion without any reasonable possibility on the part of this respondent or any other party making any response or objection.

2. This position of American Express Company, we submit, invokes a theory of ancillary jurisdiction that is unsupportable. The original jurisdiction of the United States Supreme Court does not extend to suits by private corporations or individuals against the various states. United States Constitution, Article III, Section 2, Article XI of the Amendments to the Constitution; *Duhne* v. *New Jersey,* 251 U. S. 311 (1919); *Hans* v. *Louisiana,* 134 U. S. 1 (1890). In these circumstances the holding in *Utah* v. *United States,* 394 U. S. 89, 96 (1968), declining to permit intervention, is compelling. There it was said:

> "While Morton doubtless wishes to have us settle its additional claims, we decline to permit intervention for the sole purpose of permitting a private party to introduce new issues which have not been raised by the sovereigns directly concerned."

3. Rule 42(3) of the Rules of the Supreme Court of the United States provides that on a motion for leave to file a brief amicus curiae, in addition to a statement of the movant's interest, there should be a statement of the "facts or questions of law that have not been, or reasons for believing that they will not be, adequately presented by the parties * * *." There is no such showing here and we suggest that there cannot be any such showing.

For each and all of the foregoing reasons, the motion of the American Express Company to file a brief amicus curiae should be denied.

New York, New York, April 20, 1971.

Respectfully submitted,

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Supreme Court, U.S.
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IN THE

Supreme Court of The United States

OCTOBER TERM, 1970

NO. 40 orig.

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff,

vs.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,
Defendants.

MOTION OF THE STATE OF INDIANA FOR LEAVE TO JOIN IN THE COMPLAINT AND THE BRIEF OF THE COMMONWEALTH OF PENNSYLVANIA

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IN THE

Supreme Court of The United States

OCTOBER TERM, 1970

NO. 40

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff,

vs.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,
Defendants.

MOTION OF THE STATE OF INDIANA FOR LEAVE TO JOIN IN THE COMPLAINT AND THE BRIEF OF THE COMMONWEALTH OF PENNSYLVANIA

The State of Indiana respectfully represents that the above cause is now pending in this Court before the Honorable John F. Davis, Esquire, Special Master; that several States, including the State of Indiana, have been granted leave to intervene herein as parties plaintiff and defendant respectively; that the allegations and averments of the Commonwealth of Pennsylvania in her complaint, including the prayers thereof, and the arguments presented by her in her Brief are those which Indiana, upon advice, pro-

poses to advance with the sole exception of amounts, identity of escheator, and applicable statutory law; and that as to paragraphs 19 and 21 of Pennsylvania's Complaint, the State of Indiana alleges and avers:

* * *

19. Of the said sum, at the least $80,000.00 is held by Western Union on account of money orders purchased from it in Indiana.

* * *

21, The said sum of at least $80,000.00 is subject to escheat or custodial taking by the State of Indiana under the provisions of its laws. By Act of the General Assembly of the State of Indiana, approved March 10, 1967, Acts 1967 Ch. 253 §§ 1-46, Burns Ind. Stats. Ann. 51-701 to 51-746, Indiana enacted, retroactively, the Uniform Disposition of Unclaimed Property Act. To the extent if any, this Act was ineffectively retroactive, prior to March 10, 1967, the moneys here claimed were in any event escheatable to the State of Indiana by virtue of her statutory and common laws.

Wherefore, plaintiff the State of Indiana prays:

1. That the Complaint of the Commonwealth of Pennsylvania stand as the Complaint of the State of Indiana, with the exceptions noted above, and that the Court's Special Master enter an order to that effect.

2. That the Brief of the Commonwealth of Pennsylvania stand as the Brief of the State of Indiana.

3. That the plaintiff, the State of Indiana, have such other and further relief as to this Court may appear just.

Respectfully submitted,

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IN THE

Supreme Court of the United States

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Plaintiff,

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Defendants.

BRIEF OF THE ATTORNEY GENERAL OF NEW JERSEY AS *AMICUS CURIAE*

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Deputy Attorney General,
On the Brief.

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STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,

Defendants.

BRIEF OF THE ATTORNEY GENERAL OF NEW JERSEY AS *AMICUS CURIAE*

Interest of *Amicus Curiae*

On or about March 30, 1970, the Commonwealth of Pennsylvania filed a Motion for Leave to File Complaint in the above Original Action, together with a copy of the Proposed Complaint, seeking to escheat money received by Western Union Telegraph Company for the trans-

mission of telegraphic money orders which for one reason or another were not delivered. Leave to file this complaint was granted on June 15, 1970. The Attorney General of New Jersey has reviewed this matter and has determined that the issues presented have such a potential impact on the State of New Jersey that New Jersey should participate in this litigation. In accordance with the Report of the Special Master on the Applications of the States of California, Arizona, and Indiana for leave to intervene, the Attorney General of New Jersey has determined that New Jersey's views should be presented as *amicus curiae* rather than by intervention.

Western Union Telegraph Company is a New York corporation which is, and was during the years 1943 to 1962 inclusive, authorized to do business in the State of New Jersey. Of the estimated $1,500,000 which is allegedly still held by Western Union on account of money orders purchased from said company on or before December 31, 1962, based on a projection of the figures obtained by Western Union during its 1966 survey, it appears that approximately $45,000 is held on account of money orders purchased from Western Union in New Jersey. A rule enabling the state of domicile of Western Union to escheat these unclaimed funds would deprive New Jersey of funds which are subject to escheat or custodial taking under the provisions of its laws. N.J.S.A. 2A:37-13 provides for the absolute escheat of property which has been unclaimed for 14 successive years. As an alternate method, N.J.S.A. 2A:37-30 provides for the custodial taking by the State Treasurer of personal property which has remained unclaimed for a period of 5 successive years.

ARGUMENT

In order to ensure an equitable distribution of abandoned intangibles, this Court should adopt the rule that the State of Origin of a telegraphic money order, as shown by Western Union's records, is the State entitled to the escheat or custody of unclaimed moneys arising from a money order.

The case of *Texas* v. *New Jersey,* 379 U. S. 674 (1965) established the rule that abandoned intangibles are subject to escheat or custodial taking by the State of the creditor's last known address as shown by the debtor's books and records. It is clear that the purchase of a telegraphic money order involves a debtor-creditor relationship. *Western Union Telegraph Co.* v. *Pennsylvania,* 368 U. S. 71 (1961); *New Jersey* v. *Western Union Telegraph Co.,* 17 N. J. 149, 110 A. 2d 115 (1964). However, due to the multi-stages of a telegraphic money order transaction and the fact that different states rely on different phases of the telegraphic money order transaction in determining who is the creditor, an individual state cannot ascertain the identity of the creditor of Western Union and therefore cannot escheat these monies in accordance with the *Texas* rule. In order to implement the *Texas* decision the Court must now adopt a rule which will enable the creditor to be identified.

New York urges the Court to apply to this controversy the *Texas* rule that the state of incorporation of the debtor is entitled to escheat or take into custody property owed persons as to whom there is no record of any address. However, whereas in the *Texas* case the debts consisted of money owed to creditors whose names were known, but whose last known address may or may not have

been listed on the records of the debtor corporation, in the case of abandoned intangibles arising from a telegraphic money order transaction, the creditor's identity, as well as his last address, is unknown. Rather than urging the Court to adopt a rule which would enable the creditor of a telegraphic money order to be identified, New York contends that since the identity of the creditor is unknown, his last known address is unknown and therefore, New York, as the state of incorporation of Western Union, is the state entitled to escheat or take into protective custody these intangibles. Acceptance of such a contention would permit New York to receive a windfall of approximately $1,500,000 simply because Western Union hapens to be incorporated there, and would deprive all the states involved in the telegraphic money order transaction of the benefits of the commercial transactions which took place in such states. Such a result would be contrary to the spirit of the *Texas* decision where the Court pointed out "that in deciding a question which should be determined primarily on principles of fairness, it would too greatly exalt a minor factor to permit escheat of obligations incurred all over the country by the State in which the debtor happened to incorporate itself." *Texas* v. *New Jersey, supra* at 680.

The State of New Jersey submits that the rule adopted for the escheat of these unclaimed funds should be an equitable one which would enable the many states involved in the commercial transactions of Western Union which gave rise to the unclaimed funds to share in these funds. *Texas* v. *New Jersey, supra* at 681. *See,* Note, *The Supreme Court, 1964 Term,* 79 Harv. L. Rev. 103, 204 (1965); *Conflict of Laws: Escheat of Intangible Property and Competing State Claims,* 65 Colum. L. Rev. 1100 (1965). The State of New Jersey therefore takes the position that

the rule advanced by the Commonwealth of Pennsylvania —that the state in which telegraphic money orders have been purchased from Western Union is the state entitled to the escheat or custody of the unclaimed funds held by Western Union on account of such telegraphic money orders—is fair and equitable. The state of origin is the state most intimately connected with the telegraphic money order transaction as it is the state where the money order is purchased and where the contract between the sender and Western Union is executed. In addition, payment for Western Union's service is made in the state of origin and the monies deposited with Western Union are not sent out of that state, but are mingled there with other funds of the company.

The state of origin rule is also advantageous from an administrative point of view. While Western Union's records generally provide information as to the names and addresses of the sender and sendee of a telegraphic money order, in all cases the records reveal the place of purchase. The place of origin can be readily obtained from Western Union's records without the necessity of attempting to ascertain the place of destination, the address of the sendee named in the money order, or the address of the payee of a draft issued in payment of a money order.

CONCLUSION

For the reasons set forth above and in the brief of the plaintiff, it is respectfully submitted that the Court should declare that the state of origin of a telegraphic money order, as shown by Western Union's records, is, to the extent of that state's power under its own laws to escheat or to take custodially, the only state entitled to the escheat or custody of unclaimed moneys arising from the money orders.

Respectfully submitted,

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On the Brief.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 40

Supreme Court, U.S.
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COMMONWEALTH OF PENNSYLVANIA,
Plaintiff

vs.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,
Defendants

BRIEF OF STATE OF CALIFORNIA AND MOTION FOR LEAVE TO JOIN IN THE COMPLAINT OF THE COMMONWEALTH OF PENNSYLVANIA

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Defendants

BRIEF OF STATE OF CALIFORNIA

It would serve no useful purpose to set forth all of the material that appears in the brief of the Commonwealth of Pennsylvania and the State of California, with the addition of the language which appears below adopts the brief of Pennsylvania.

THE RULE URGED BY PENNSYLVANIA IS FAIR AND EASY OF APPLICATION

The basis for the decision in *Texas* v. *New Jersey*, 379 U.S. 674, is found in the following language:

> "We realize that this case could have been resolved otherwise, for the issue here is not controlled by statutory or constitutional provisions or by past decisions, nor is it entirely one of logic. It is fundamentally a question of ease of administration and of equity. We believe that the rule we adopt is the fairest, is easy to apply, and in the long run

will be the most generally acceptable to all the States." 379 U.S. 674, 683.

The rule adopted as being the fairest way of distributing abandoned property to which several states had claims was to make a distribution to the states in proportion to the commercial activities of their residence. The rule urged by the State of Pennsylvania which proposes that unclaimed telegraphic money orders be escheated to the state in which the orders originated will carry out the intent expressed in *Texas* v. *New Jersey* both as to fairness and ease of administration. California has by statute (California Code of Civil Procedure section 1511) adopted such a rule in California joins with Pennsylvania in asking that unclaimed money orders should properly be escheated to the state in which they had their origin.

We believe that it does not require evidence to support the proposition that the normal place of purchase of money orders is at or near the home of the purchaser or sender. Courts and judges need not rid themselves of common sense and knowledge of the habits of humanity in deciding matters before them. If it is accepted that money orders are normally purchased in the state of residence adoption of the rule contended for by Pennsylvania seems inevitable.

To apply a literal interpretation of *Texas* v. *New Jersey*, *supra*, so as to permit the escheat of money orders where the address of the sender is unknown to the state of corporate domicile would be in complete and total defiance with the spirit of that decision, that

is, that a rule of fairness and ease of administration should prevail. It seemingly is conceded by all parties that the state of residence of the owners of the claims against the telegraph company is the proper state to escheat these items. The only point of similarity between the telegraphic money orders involved here and the unclaimed dividends that were the subject of *Texas* v. *New Jersey* is that in both cases the addresses of the owners are unknown. In *Texas* v. *New Jersey* the court in stating that the corporate domicile should be the proper state to escheat property belonging to persons whose addresses were unknown was faced with a practical problem: What should be done with such property? No one of the contending states could by means of evidence, presumptions or otherwise establish that it, rather than another, was the state of residence of any individual whose address was not found in the records of the company. Adoption of the rule that property owed to persons as to whom there was no address at all should go to the state of corporate domicile was pronounced simply because there was no reasonable alternative. As to money orders there is a reasonable alternative: Escheat to the state in which the money order originated. Such a distribution is not only a reasonable alternative but it would seem to be the only reasonable method if the underlying spirit of *Texas* v. *New Jersey* is to govern and unclaimed property is to be distributed among the states in proportion to the commercial activities of their residents.

It is not necessary to argue the applicability of the California statutory provision in a law suit involving several states, each of which can urge claims based on its own law to the sums involved. It is submitted, however, that the California presumption is a reasonable one and it does embody a rule, which aside from its effect as a law of California, makes for a fair division of the unclaimed money orders involved here.

Respectfully submitted

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 40

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff

vs.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,
Defendants

MOTION OF THE STATE OF CALIFORNIA FOR LEAVE TO JOIN IN THE COMPLAINT OF THE COMMONWEALTH OF PENNSYLVANIA

The State of California respectfully represents that the above cause is now pending in this Court before the Honorable John F. Davis, Esquire, Special Master; that several States, including the State of California, have been granted leave to intervene herein as parties plaintiff and defendant respectively; that the allegations and averments of the Commonwealth of Pennsylvania in her complaint, including the prayers thereof, are those which California proposes to advance with the sole exception of amounts, identity of escheator, and applicable statutory law; and that as to paragraphs 19 and 21 of Pennsylvania's Complaint, the State of California alleges and avers:

19. Of the said sum, at the least $100,000 is held by Western Union on account of money orders purchased from it in California.

* * * * *

21. The said sum of at least $100,000 is subject to escheat or custodial taking by the State of California under the provisions of its laws (California Code of Civil Procedure sections 1500 et seq.) to the extent, if any, that the statutory provisions mentioned are ineffective the moneys here claimed were in any event escheatable to the State of California by virtue of her statutory and common laws.

WHEREFORE, plaintiff, the State of California prays:

1. That the Complaint of the Commonwealth of Pennsylvania stand as the Complaint of the State of California, with the exceptions noted above, and that the Court's Special Master enter an order to that effect.

3. That the plaintiff, the State of California, have such other and further relief as to this Court may appear just.

Respectfully submitted,

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APR 30 1971
E. ROBERT SEAVER, CLERK

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Supreme Court of the United States

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Plaintiff,

and

STATE OF CONNECTICUT,
Intervenor-Plaintiff

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,
Defendants

INTERVENING COMPLAINT OF THE STATE OF CONNECTICUT

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Supreme Court of the United States

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Plaintiff,

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STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,
Defendants

INTERVENING COMPLAINT OF THE STATE OF CONNECTICUT

The State of Connecticut, intervenor-plaintiff, by Robert K. Killian, its Attorney General, brings this original action against the State of New York, the State of Florida, the State of Oregon, the Commonwealth of Virginia, and The Western Union Telegraph Company, defendants, and alleges as follows:

1. The plaintiff, the Commonwealth of Pennsylvania, the intervenor-plaintiff, the State of Connecticut, and the defendants, the State of New York, the State of Florida, the State of Oregon, and the Commonwealth of Virginia are States of the United States.

2. The defendant, The Western Union Telegraph Company, hereinafter referred to as "Western Union", is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 60 Hudson Street, New York, New York.

3. This is a civil controversy (a) between two or more States of the United States, and (b) between Western Union and States other than its State of incorporation, and is, therefore, within the original jurisdiction of the Supreme Court of the United States, under Article III, Section 2 of the Constitution of the United States, and of the United States Code, Title 28, Section 1251(a)(1) and (b)(3).

4. Western Union is joined as a party defendant because the subject-matter in controversy consists of moneys received by the company for telegraphic money orders, and the judgment prayed for will necessarily include an order directing the company to pay the amounts so received, or a portion or portions thereof, to one or more of the States named herein as parties, or to a State or States not named as parties.

5. New York, Florida, Oregon and Virginia are the only States named as defendants herein, because they are the only States which, according to intervenor-plaintiff's knowledge, are asserting rights which may be contrary to the claims of Connecticut.

6. Western Union is, and was during the period here involved, authorized to do business in most of the States of the United States and in the District of Columbia, and, prior to divestment of its international operations on September 20, 1963, it was also authorized to do business in certain foreign countries.

On or about October 7, 1943, Western Union merged with Postal-Telegraph, Inc. and operating and sales subsidiary companies, and, in so merging, Western Union assumed the obligations of Postal-Telegraph, Inc. and subsidiary companies. To the extent telegraphic money orders of the predecessor companies resulted in obligations which were assumed by Western Union and are involved in this action, such telegraphic money orders are herein treated as if they were originally Western Union telegraphic money orders.

7. In addition to its telegraphic message service, Western Union carries on a telegraphic money order service, receiving money from a purchaser of a telegraphic money order at one place for payment of the amount so received to a named person at another place. Telegraphic money orders are hereinafter referred to as "money orders" or "money order".

8. The company uses the term "sender" to designate the purchaser of a money order.

The term "sendee" is used hereinafter to designate the person to whom the money order directs the money to be paid.

The term "State of origin" or the term "place of origin" is used hereinafter to designate the State or place where the money order is purchased from Western Union and where is received from the sender the amount to be paid to the sendee.

The term "State of destination" or the term "place of destination" is used hereinafter to designate the State or place in which the money order directs the money to be paid to the sendee.

9. The procedure observed by Western Union in its telegraphic money order service is as follows:

a. The sender fills out a money order form at a Western Union sending office in the State or place of origin and gives it to the company's clerk, together with the money to be sent and the company's charges for sending it.

All of the terms and conditions set forth in the money order are part of Western Union's tariffs on file with I.C.C., and also when required by the laws of any State, are part of Western Union's tariffs on file with the regulatory body of such State.

The form has blank spaces to be filled in by the sender, showing the amount to be sent, the name and address of the sendee, and the sender's name and address. In most cases the sender fills in the blanks, but in many cases he fails to fill in the space for his address. The clerk fills in the blanks showing the address of the office of origin, the date and hour the money order is purchased, and the company's charges.

The money order states that it is subject to the conditions printed on the face and back thereof. One of the conditions on the back is the following:

"Domestic money orders will be cancelled and refund made to the sender if payment cannot be effected within 72 hours after receipt at paying office . . ."

As to other money orders, the period fixed in the money order is 5 days or 10 days.

b. A receipt is given to the sender.

c. The company's clerk at the office of origin then sends a telegraphic inter-office message to its paying office nearest the sendee's address shown in the money order, directing the paying office to pay the money to the sendee.

The money received at the sending office for the money order is not sent to the paying office, but remains at the sending office and is intermingled with moneys collected there for telegrams and other receipts. The intermingled moneys are used for the purpose of paying any incoming money orders and other authorized expenditures of the sending office. Accumulation of surplus cash, if any, is deposited in a local bank account in the name of Western Union. Accumulation of excess funds, if any, in the local bank account is remitted to a Divisional Headquarters Cashier, who, in turn, remits to the company Treasurer.

d. In most cases, the sendee is notified by the paying office that a telegraphic money order has been received for the payment of money to him, and to call at the paying office, the address of which is given, to receive the money.

In some cases, where the sendee is otherwise aware of the money order, notice may not be sent to him. In some cases the company attempts to give such notice, but is unsuccessful in the attempt.

e. Upon identifying himself at the paying office, the sendee is given a negotiable company draft, which he may endorse and cash immediately at the company's office, or keep for future use.

In some instances, the sendee does not call for the draft, but, by request of the sender or sendee, it is sent to the sendee.

f. If the sendee cannot be located, or if, after notice, he fails to call for the draft, or if, for any other reason, the company is unable to issue a draft to the sendee, then, after 72 hours (or other period specified by the conditions of the money order), the money order is cancelled by the paying office notifying the sending office that payment has not been effected, and, under the conditions printed on the money order, refund to the sender is required. Once the money order is canceled because of the expiration of the specified period, the company will not later issue a draft to the sendee or otherwise recognize any right in the sendee under the money order.

g. The sending office then notifies the sender that payment to the sendee could not be effected, and that the company will make refund to the sender.

h. The sender may present himself at the sending office and receive a negotiable company draft, which he may endorse and cash immediately at the company's office, or keep for future use.

In some instances, the sender does not call for the draft, but at the sender's request, it is sent to him.

If the sender cashes the draft, it is paid from moneys collected at the sending office for telegrams, money orders and other receipts, and the clerk at that office takes credit for the amount so paid to the sender. In the event that this amount is not sufficient, the manager draws the amount necessary from the local bank account, and in turn, if that account is not sufficient, the manager receives a check from the divisional headquarters cashier to meet such deficit.

i. Where the company has issued a draft, either to the sendee for the amount of the money order, or to the sender for the refund, and the draft is not immediately cashed, the Company holds the amount to be paid until the draft is presented by the payee or his transferee, and, upon such presentation, pays the amount of the draft.

10. Usually, the purpose of the money order has been accomplished; the sendee has received a draft and has cashed it.

11. In those instances in which the sendee has received a draft, but the draft has not been presented for payment, Western Union presently holds the moneys, awaiting presentation of the draft.

12. In those instances in which Western Union has been unable to deliver a draft to the sendee, the company has canceled the money order, and where it has been able to do so, has made refund to the sender.

13. Usually, the refund has been accomplished; the sender has received a draft for the refund and has cashed it.

14. In those instances in which the sender has received a draft for the refund, but the draft has not been presented for payment, Western Union presently holds the money, awaiting presentation of the draft.

15. In those instances in which the money order has been canceled, but Western Union has been unable to deliver a draft to the sender for the refund, Western Union presently holds the money awaiting the sender's request for the refund.

16. In 1966, at the suggestion of New York and Pennsylvania, Western Union made a survey of more than

17,000 money orders purchased in 1943, 1948, 1953 and 1958, as to which Western Union still held the money received by it for money orders, such four years, at five year intervals, being chosen as sampling periods.

The said survey showed that as to 78.1% of the aggregate amount of the money orders examined, the company had not been able to effect payment and the money orders had been canceled, but that the company had not been able to make refund to the senders or to deliver drafts to them.

As to the other 21.9% of the amount of the money orders examined, drafts had been issued either to sendees or to senders. The survey did not show what portion of the 21.9% represented money orders as to which drafts had been delivered to the sendees, and what portion represented money orders as to which drafts had not been delivered to the sendees, but to the senders for refunds.

17. The present proceeding relates to moneys presently held by Western Union on account of money orders purchased from the company on or before December 31, 1962.

18. In excess of $1,500,000.00 is still held by Western Union on account of money orders purchased from the company on or before December 31, 1962.

19. On information and belief, of the said sum, approximately $100,000.00 is held by Western Union on account of money orders purchased from it in Connecticut.

20. The said sum of approximately $100,000.00 has been unclaimed for more than seven years by the persons thereto entitled.

21. On information and belief, the said sum of $100,000.00 is subject to escheat or custodial taking by the

State of Connecticut under the provisions of its laws. (Conn. Gen. Stats., § 3-56a, et seq.).

22. In an action instituted in 1953 by the Commonwealth of Pennsylvania against Western Union, and affirmed in Gottlieb, Escheator v. Western Union Telegraph Company, 400 Pa. 337, it was held that Pennsylvania, as the State of origin of money orders as to which moneys held by Western Union were unclaimed for seven years, was entitled to the escheat or custody of such moneys. Upon appeal to the U. S. Supreme Court, the judgment of the Pennsylvania Court was reversed in Western Union Telegraph Company v. Pa., 368 U.S. 71, because of the potential claims of other States to the same intangibles, and because the Pennsylvania judgment could not protect Western Union from such potential claims of other States.

23. The intervenor-plaintiff is informed that Florida asserts that under its laws, it is entitled to the custody of such money if Florida was the state of destination of the money orders. As to money orders of which Connecticut was the State of origin and Florida was the State of destination, there is a controversy between Connecticut and Florida.

24. The intervenor-plaintiff is informed that Oregon asserts that under its laws, the sendee of a money order is the donee beneficiary or creditor beneficiary of the money order even though no drafts were issued, and that as to money orders to a sendee in Oregon, it is the State entitled to the custody of such moneys. As to money orders of which Connecticut was the State of origin and Oregon was the State of destination, there is, therefore, a controversy between Connecticut and Oregon.

25. The intervenor-plaintiff is informed that Virginia claims that where a draft was issued to a sendee in Virginia, that State is entitled to the custody of such moneys. As to

money orders of which Connecticut was the State of origin, and drafts were issued to sendees in Virginia, there is, therefore, a controversy between Connecticut and Virginia.

26. The intervenor-plaintiff is informed that under the New York Abandoned Property Law, Sec. 1309, as amended in 1969, New York claims all moneys arising from money orders purchased from January 1, 1930 to January 1, 1958, without reference to any fact other than the purchase of the money order during such period. Neither the State of origin, the State of destination, nor the State in which a draft was issued, is recognized by New York as having any claim to such moneys. Under the said statute, New York also claims as to money orders purchased from Western Union on or after January 1, 1958, (a) where the last known address of the purchaser is in New York, whether or not a draft has been issued; (b) where no address is shown on the records of Western Union and a draft was issued in New York; and (c) if no address is shown on the records of Western Union and no draft was issued.

By reason of New York's claim as to money orders purchased before January 1, 1958, there is, therefore, a controversy between New York and Connecticut as to money orders purchased in Connecticut.

By reason of New York's claim as to money orders purchased on or after January 1, 1958, in those cases where the address of the purchaser is not shown on Western Union's records, but the State of origin is shown on such records as being in Connecticut, there is a controversy between New York and Connecticut.

27. Western Union's books and records show the State or place of origin of every money order, as well as the State or place of destination of every money order. In many cases,

its books and records do not show the address of the sender; likewise, in many cases, its books and records do not show the address of the sendee; and in many cases, its books and records do not show the address of the payee of the draft issued by the Company.

28. No judgment of a Connecticut Court could be binding upon any other claimant State unless such other State were a party to the proceeding in the Connecticut court, and a Connecticut court cannot make any other State a party, without the consent of the latter State. If Connecticut were to intervene in a proceeding in a court of another State and obtain judgment, such judgment would not bind any other claimant States which did not intervene.

If actions were brought in the various States against Western Union for the same moneys, the decisions of their courts, under their respective laws and conflicts of law rules, might be inconsistent.

29. As to 78.1% of the sum of approximately $100,000.00 held by Western Union arising out of money orders of which Connecticut was the State of origin and as to which no drafts were issued, then Connecticut, the State of origin, claims such amounts, and the controversy is, therefore, between three states, (1) Connecticut as the State of origin, (2) the State of destination, if other than Connecticut, and (3) the State of New York, in which Western Union was incorporated.

As to the 21.9%

(1) if it be determined by this Court that issuance of a draft does not constitute payment of a money order or refund, but that the State of origin of the money orders for the said 21.9% is entitled to such moneys, then, Connecticut is entitled to such 21.9% of the $100,000.00;

(2) if it be determined by this Court that issuance of a draft does not constitute payment of a money order or refund, but that the State of destination of the money orders is entitled to such moneys, then, conversely, where it was the State of destination, Connecticut is entitled.

30. If it be determined by this Court that the State of destination rather than the State of origin is the State entitled to the escheat or custody of the unclaimed moneys held by Western Union, then Connecticut would not be entitled to any part of the said sum of $100,000.00, except where it was both the State of origin and the State of destination. However, under such a ruling, Connecticut would be entitled as the State of destination as to unclaimed moneys arising from money orders destined to Connecticut.

31. If it be determined by this Court that issuance of a draft constitutes absolute or conditional payment of a money order or a refund, then as to drafts issued to sendees or senders in Connecticut, Connecticut is entitled to the moneys held by Western Union for payment of the drafts.

32. Only by a judgment of this Court can it be determined which of the various States are entitled to the moneys held by Western Union, as above set forth.

33. Neither the intervenor-plaintiff, Connecticut, nor the defendant, Western Union, can be protected from irreparable injury and loss of property unless this Court grants the relief sought by this Complaint.

34. The plaintiff has no adequate remedy at law, and no remedy whatsoever in any other Court.

Wherefore, the plaintiff prays:

(1) That this Court take jurisdiction of the parties and subject matter herein;

(2) That this Court hear and determine the controversies herein, either by referring this case to a Special Master or Federal District Court to take evidence and make appropriate reports, or in such other manner as the Court deems fit;

(3) That a temporary injunction be issued restraining the defendant, the State of New York, and other States named as defendants herein from proceeding with any action now pending, or from instituting any action hereafter, to escheat and/or take custody of said property, pending further orders of this Court;

(4) That a temporary injunction be issued restraining the defendant, The Western Union Telegraph Company, from paying, delivering, or in any manner relinquishing, the said property to the defendant, the State of New York, or to any other State, pending further orders of this Court;

(5) That judgment be entered that the moneys held by Western Union are subject to the escheat or custody of one or more of the following States:

(a) The *State of origin* of the money orders, as shown by the books and records of Western Union;

(b) The *State of destination* of the money orders, as shown by the books and records of Western Union;

(c) The *State in which a draft has been issued* for the amount of the money order or the amount of the refund, as shown by the books and records of Western Union;

(d) The *State of last known address of the sender* of a money order, as shown by the books and records of Western Union;

(e) The *State of last known address of the sendee* of a money order, as shown by the books and records of Western Union;

(f) The *State of the last known address of the payee* of a draft, as shown by the books and records of Western Union;

(g) The *State of domicile of Western Union;*

(h) Any other State as to which the facts adduced established such right.

(6) That such judgment decree that no State other than the State or States designated under (5) above has the power of escheat or custody of, or the right to prosecute a claim of escheat or custody against, such property.

(7) That the intervenor-plaintiff, the State of Connecticut, have such other and further relief as this Court may deem just.

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The State of Connecticut
30 Trinity Street
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April, 1971

IN THE

Supreme Court of the United States

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

and

STATES OF CONNECTICUT, CALIFORNIA, and INDIANA,

Intervening Plaintiffs,

v.

STATES OF NEW YORK, FLORIDA, OREGON and VIRGINIA, and the WESTERN UNION TELEGRAPH COMPANY,

Defendants,

and the

STATE OF ARIZONA,

Intervening Defendant.

REPORT OF JOHN F. DAVIS, SPECIAL MASTER

To the Chief Justice and Associate Justices of the Supreme Court of the United States:

HISTORY OF THIS PROCEEDING

This case involves a dispute between the States as to which has the right to escheat, or take custody of, unclaimed monies which were originally paid to the Western Union Telegraph Company for transmission by wire, and which could neither be delivered according to instructions nor returned to the senders.

The suit was instituted by Pennsylvania by the filing on March 13, 1970, of a motion for leave to file a complaint against New York, Florida, Oregon, Virginia and Western Union. Specifically, Pennsylvania's complaint alleged that on or before December 31, 1962, approximately $1,500,000.00 of telegraphic money orders for which payment had been made to Western Union were not paid to the intended recipients nor returned to the senders and, of that amount, approximately $100,000.00 originated in Pennsylvania offices of Western Union.[1] Pennsylvania asserted the right under its statute governing the disposition of property unclaimed for seven years to escheat, or take custody of, that $100,000.00, but complained that conflicting claims were being made by the other States named as defendants. Pennsylvania asked for a judgment as to which State has the right to take the unclaimed funds and for a temporary injunction against the payment of the funds by Western Union or the taking of them by the defendants, pending the disposition of the case.

The motion for leave to file the complaint was granted on June 15, 1970 (398 U.S. 956), and the defendants were

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[1] Before its merger with Western Union in 1943, Postal Telegraph, Inc., a Delaware Corporation, had offered a telegraphic money order service similar to Western Union's. Western Union inherited Postal's obligations under those contracts. None of the parties question that unpaid orders issued by Postal stand in the same posture as those sold by Western Union itself. In this report no attempt will be made to distinguish those transactions and references to Western Union orders may be taken as including Postal Telegraph orders.

given 60 days to answer. All of the defendants filed answers[2] and the state of Connecticut on August 6, 1970, filed a motion to intervene as a party plaintiff. That motion was granted on October 12, 1970, and the court further appointed the undersigned Special Master in the proceedings (400 U.S. 811).[3]

Thereafter, the States of California and Indiana filed motions to intervene as plaintiffs and Arizona moved to intervene as a defendant. By orders of November 23, 1970, and January 25, 1971 (400 U.S. 924, 1019), the Court referred these motions to the Special Master. In a report

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[2]New York has represented that no payments would be sued for pending the disposition of this case (New York Answer, page 4). The Court has taken no action on the plea for an injunction. On the final disposition of the matter there would appear to be no need for injunctive relief thereafter and the Special Master recommends that no action on the plea for an injunction is necessary. If this Court believes that disposition of the request is necessary to tidy things up, the Special Master recommends that the injunction be denied as unnecessary.

[3]The order appointing the Special Master provided as follows:

> It is hereby ordered that John F. Davis, Esquire, of Washington, D.C., be and he is hereby, appointed Special Master in this case with authority to fix the time and conditions for the filing of additional pleadings and to direct subsequent proceedings and with authority to summon witnesses, issue subpoenas, and take such evidence as may be introduced and such as he may deem it necessary to call for. The master is directed to submit such reports as he may deem appropriate.
>
> The compensation of the Special Master, the allowances to him, the compensation paid to his technical, stenographic, and clerical assistants, the cost of printing his report, and all other proper expenses shall be charged against and be borne by the parties in such proportion as the Court hereafter may direct.
>
> It is further ordered that if the position of Special Master in this case becomes vacant during a recess of Court, the Chief Justice shall have the authority to make a new designation which shall have the same effect as if originally made by the Court herein.

filed in February, 1971, the Special Master recommended that these motions be granted and the Court so ordered on March 1, 1971 (401 U.S. 931).[4]

At the request of the Special Master, the parties met in Washington, D.C. on November 12, 1970, to chart the course of the proceedings. It was agreed that an attempt would be made to arrive at a stipulation of agreed facts in order to obviate the necessity of taking evidence. Thereafter, various of the parties met without the presence of the Special Master and all agreed to a statement of facts of 28 pages and 27 exhibits, it being understood that such agreement did not concede the relevance or materiality of the facts recited nor limit any of the parties with respect to the offer of additional evidence.

With the permission of the Special Master, the American Express Company attended the November conference and represented orally that its problems with respect to uncashed travelers checks raised common questions with the issues before the Special Master. American Express suggested that a single rule, which would apply to it as well as to Western Union telegraph money orders, was desirable. The Special Master stated that he thought that American Express could not ask for answers to its peculiar problems in the case before him, except insofar as the rules applicable to telegraphic money orders would, by implication, apply to travelers checks. However, he stated that he thought it appropriate to consider the American Express travelers checks and any other similar instruments, insofar as the disposition of unclaimed funds from such transactions shed light on a proper disposition of unclaimed funds arising from Western Union telegraphic money orders. The Special Master stated that if American Express wanted its factual situation and its legal arguments to be considered, it should submit such matters as *amicus curiae* either with the consent of all

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[4]On May 3, 1971, New Jersey filed a *brief amicus* supporting the position of Pennsylvania.

of the parties, if they should all agree, or on motion, if any party objected. New York thereafter refused to consent and American Express filed a motion for leave to file a statement and brief as *amicus curiae*. This motion also was opposed by New York. The Special Master now grants the motion of American Express for leave to file its statement and brief with him as *amicus curiae* and will consider the factual statement and the brief insofar as they may have any bearing on the issues before him.

Pursuant to a schedule proposed by the Special Master, the parties have submitted briefs and, on June 22, 1971, convened in the District of Columbia for oral argument. A complete set of the briefs filed with the Special Master and a copy of the transcript of the oral argument is being lodged with the Clerk of the Court in order that he may preserve them with the records of the case if he so desires. The records of the Court seem an appropriate place for the retention of these documents for further reference. The Special Master has no continuing commitment to the case and it might prove inconvenient to all concerned to rely upon his files.

At the commencement of the session convened before the Special Master to hear oral argument, Pennsylvania suggested that the stipulation of facts be supplemented with additional data which it had previously circulated among the parties. This material consisted of a letter from Western Union's Minnesota auditor summarizing the escheatable items from 1963 transactions as shown on the Western Union books, with illustrative samples designed to show the kind of addresses given by persons buying telegraphic money orders. New York refused to consent to the addition of the material to the stipulation and Pennsylvania thereupon offered the material in evidence through the testimony of counsel for Western Union. New York again objected on grounds of irrelevance and immateriality and suggested that the witness lacked knowledge to authenticate the material. The Special Master accepted the evidence, subject to further consideration as to its relevance and the manner of its sub-

mission. To dispose of this matter at once, the Special Master here notes that there is a serious question as to whether the evidence was properly authenticated since the witness had no personal knowledge of the records. It is not necessary to pass on that issue since the information contained does not appear to be in the least helpful in deciding the case and should be rejected as immaterial. The Special Master has not relied upon it in any degree in reaching his conclusions. However, a copy of the material will be lodged with the Clerk of the Court so that if the Court disagrees with the decision of the Special Master in this matter, it may consider the material offered either as an offer of proof or in such other manner as the Court determines.

FINDINGS OF FACT

There is no dispute among the parties as to the underlying facts, though there are some ambiguities which the parties have not resolved. The Special Master makes the following findings:

1. Western Union is a New York corporation, the principal place of business of which is in New York where it maintains its executive offices, keeps its general books of account and holds meetings of its directors and management.

2. Western Union carries on business in each of the States of the United States and specifically has carried on the telegraphic money order business described below in each of the States involved in this case. Its interstate business is regulated by the Federal Communications Commission and its intrastate business is generally regulated by state regulatory commissions.

3. The procedures followed in providing the telegraphic money order service are as follows:

a. A person wishing to send money by wire fills out an application form in a Western Union office. The form contains blanks to be filled in showing the sender's name

and address, the payee's name and address and the amount of money to be sent. The sender gives the completed form together with the principal amount of money to be sent and the handling charges to a clerk at the office of origin.

b. The clerk at the office of origin sends a telegraphic message to the Western Union office nearest the payee's address as shown on the form, which message directs the payment of the amount designated.

c. The office at the point of destination notifies the payee and asks him to call at the office. In some cases the destination address is merely "Will Call" or "Care of Western Union," in which case the money is merely held awaiting the appearance of the payee.

d. If the payee appears at the office within 72 hours of the time of receipt of the message in the paying office and properly identifies himself, he is either paid in cash or given a negotiable money order draft.

e. If, within 72 hours, the payee cannot be located or for any reason fails or refuses to receive the draft or the cash, the telegraphic money order is cancelled by the paying office and the office of origin is notified so that it can refund the principal amount to the sender.

f. The office of origin thereupon attempts to notify the sender and asks him to call at the office. If the office is successful in locating the sender, the principle amount is repaid to him by a negotiable draft.

4. The funds which the States are seeking to escheat or to take into custody, arise in one of four ways:

a. The draft which has been delivered to the payee is never presented for payment.

b. After the order has been cancelled, either because the payee cannot be found or because he fails to accept payment, the attempt to refund the money to the sender also fails because he cannot be located or because he fails to accept the refund.

c. As a variation of the last possibility, the sender may be issued a refund draft which is never presented for payment.

d. Finally there are instances where, through error, either the payee or the sender is paid less than is due him.

5. Western Union has been offering the telegraphic money order service for more than 50 years. The volume of such business now amounts to as much as $10,000,000 a year. Pennsylvania alleges that the unclaimed funds as of December 31, 1962, amounted to $1,500,000 (Pennsylvania Complaint, page 12). This figure is not admitted by the answers of New York (New York Answer, page 2) or Western Union (Western Union Answer, page 3). Florida and Virginia admit the figure for the purposes of the litigation (Florida Answer, page 2; Virginia Answer, page 3). Oregon neither admits nor denies the figure (Oregon Answer, page 2). The stipulation of facts shows that Western Union carries on its books $1,184,000 as a liability reserve on unpaid orders (Stipulation, page 19) which is exclusive of $286,148.27 which has been paid to New York under its abandoned property law (Stipulation, page 19) and $1,160.40 similarly paid to Kentucky (Stipulation, page 19). Since the nature of the relief asked in this proceeding is a declaratory judgment rather than an order for specific payment, the Special Master believes that these figures give a sufficient basis for a judgment. There is no dispute that there are unclaimed funds in very material amounts, probably amounting to between $1,000,000 and $1,500,000.[5]

6. The ledger records maintained by Western Union do not designate any person as creditor nor do they indicate the addresses of either the sender or the payee. They do show the amount involved in each transaction and the loca-

[5]The average amount of the individual money orders is not specified, but in the exhibits attached to this Stipulation they appear to be generally of small size. The vast majority being from $1.00 to $25.00. One can safely assume that the likelihood of undelivered funds remaining unclaimed diminishes as the size of the transaction increases (Exhibit to Stipulation No. 20).

tion of the office of origin and the office of destination. Also, these ledgers do not show whether the person to whom the money was to be paid could not be located or whether a draft issued to him or to the sender was never presented for payment. However, Exhibit 16 to the Stipulation indicates that the application forms with whatever information they contained as to the addresses have been retained in the records as far back as 1930 in some instances and are generally available since 1941 (Exhibit 16 to the Stipulation). The Western Union Comptroller's Office has estimated that the application forms cover 200,000 transactions (Stipulation, page 16) and that it would cost as high as $175,000 to reduce the information available to "reportable form" (Stipulation, page 17).

7. The Stipulation states "In most cases the sender fills in the blanks [in the application form], but in many cases he fails to fill in the space for his address" (Stipulation, pages 4 and 5.) Nowhere in the pleadings or in the Stipulation is there any more specific statement of how frequently this omission occurs, but it must be clear that not all of the unclaimed funds were received in transactions where the addresses were omitted.

DISCUSSION

I. BACKGROUND OF THE CASE

In 1953, Pennsylvania commenced escheat proceedings against Western Union under its law permitting the escheat of property "within or subject to the control of the Commonwealth" if unclaimed for seven years (27 Purdon's Statutes, § 333) for sums of money paid in Western Union offices in Pennsylvania in cases where payment to the designated payees had not been accomplished and where refunds to the senders also failed. Pennsylvania was successful in obtaining a decree from the Pennsylvania Common Pleas Court for $39,857.74, which was affirmed by the Supreme Court of Pennsylvania in *Commonwealth v. Western Union*

Telegraph Co., 400 Penn. 337 (1960). On appeal, this Court reversed that judgment holding that it deprived Western Union of due process since the judgment could not protect Western Union against rival claims of other States. The Court noted that protection could be afforded against such claims in an original suit in this Court, where rival claimants could be made parties. *Western Union Telegraph Co. v. Commonwealth of Pennsylvania*, 368 U.S. 71.

Thereafter, this Court held in *Texas v. New Jersey*, 379 U.S. 674, that the primary right among rival States to escheat intangible property in the form of debts is in the State of the creditor's last known address as shown by the debtor's records. In instances where the records contain no address or in instances where the State where the creditor's address is situated has no law permitting escheat of the property, then the State of the corporate domicile of the debtor may take the property.

II. PENNSYLVANIA'S CLAIM

In this suit, Pennsylvania is seeking in an original action an adjudication on the issue which the Court previously held could not be resolved in the state courts and has named certain rival States as defendants. It relies not only on the escheat law (27 Purdon's Statutes, § 333) but also on the law permitting custodial taking (72 Purdon's Statutes, §1310). The action relates to money orders purchased on or before December 31, 1962, and Pennsylvania in its complaint lays claim to all such funds where the transactions originated in Pennsylvania offices of Western Union. In its reply brief, and again in oral argument, Pennsylvania has receded from its original claim to the extent that it no longer claims amounts where drafts for payment have been issued and where the records of Western Union show some other State as the address of the payee of such drafts. (Penn. reply

brief, pages 10-11; Transcript of oral argument, pages 11-12, 14).[6]

Pennsylvania's claim is based on its interpretation of *Texas v. New Jersey*, 379 U.S. 674, or perhaps, more accurately, a suggested modification of that ruling to meet the requirements of this particular type of transaction. Pennsylvania asserts that the Western Union records do not identify anyone as the creditor and that in many instances addresses are not given for the sender of the money order and sometimes not for the payee. Under these circumstances Pennsylvania argues that a strict application of the *Texas v. New Jersey* rule would result in the escheat of the entire amount to New York, a result which it claims is inconsistent with the purpose of *Texas v. New Jersey*. On the other hand, the originating office is, Pennsylvania claims, presumptively in the same state as the residence of the sender so that to permit the State of origin to escheat would permit the creditor's home State to take in most cases and would result in an equitable distribution of the unclaimed funds.[7]

III. NEW YORK'S POSITION

New York asserts a claim conflicting with that of Pennsylvania and of all the other States (New York Answer, pages 4 and 5). This claim is asserted under the New York Abandoned Property Law, as amended in 1969 and 1970 (2½

[6]Pennsylvania's position is not clear to the Special Master on the disposition of funds where a draft has been issued but where there still is no address in Western Union's records. I do not know whether in that case Pennsylvania would argue that the right to escheat remains in the State of origin of the money order or whether it moves to the State where the draft itself was issued, or possibly even goes to the domiciliary state of Western Union, namely New York.

[7]It is to be noted that the Stipulation in *Western Union v. Pennsylvania* states "in numerous cases the sender or payee is a resident of a state other than the one from or to which the money order is sent." See Transcript of Record, p. 27, in *Western Union v. Pennsylvania*, No. 15, Oct. Term 1961. This statement is not included in the stipulation in this case, but it is obvious that it must be true.

McKinney's Consolidated Laws, §1309). As to money orders issued prior to 1930, New York apparently makes no claim. As to money orders drawn between January 1, 1930, and January 1, 1958, New York claims, as the domiciliary State of Western Union, the right to all unclaimed monies paid to Western Union for telegraphic money orders. As to money orders drawn since January 1, 1958, New York claims the funds under the following circumstances:

a. If the address of the purchaser on the records of Western Union is in New York; or

b. If no address of the purchaser is shown on Western Union records; or

c. If the purchaser's last known address is located in a State not having a statute providing for escheat or custodial taking.

Finally, New York claims the right to such funds "where it is not feasible to determine the identity of the last known address of the creditor from the books of Western Union." This claim presumable covers situations where drafts have been issued, as well as situations where the sender did include his address on his application form, but where the expense of relating the records to the ledger entry is too great to justify the process.

The effect of New York's claims seems to be that it should be entitled to take custodially the entire sum total of these funds in transactions entered into since 1930, since New York relies on the stipulation that the names and addresses of the creditors are not in reportable form (Stipulation, page 16). New York emphasizes that under its statute it is merely taking custody of the items so that, presumably, if a State established addresses for purchasers of particular items arising from transactions since January 1, 1958, New York would surrender those items on proper escheat proceedings by a competing State (New York Brief, page 29).

IV. POSITION OF OTHER STATES

Connecticut (Conn. Brief, page 4), California (Brief and motion, page 1) and Indiana (Motion, pages 1 and 2) support the position taken in the Pennsylvania complaint as does New Jersey in its *brief amicus* (Brief page 5). Oregon (Oregon Answer, paragraph 4) and Virginia (Virginia Brief, page 1) basically support Pennsylvania's position as modified in its reply brief and in oral argument to permit the address of the payee of an unpresented draft to control. Arizona (Arizona Motion, page 2) and Florida (Florida Answer, page 2) claim the funds when the address of the payee of the money order is in Arizona or Florida regardless of the address of the sender. This is asserted to result from their statutes which are modeled on the Uniform Disposition of Unclaimed Property Act approved by the National Conference on Uniform Laws in 1955.[8]

V. ANALYSIS OF RIVAL CLAIMS

In general terms, the parties have suggested three formulas to determine the State having the superior right to take these unclaimed monies now in the hands of Western Union.

(1) The ruling of this Court in *Texas v. New Jersey* should be applied literally so that where Western Union's records show an address for a creditor, the State in which that address falls may take the funds if it has a law providing for such taking; where there is no such address or where the

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[8] Florida apparently bases its argument on the inclusion of the word "payee" in the definition of "owner" in Section 1(f) of the Uniform Act. However, since the same subsection also includes the word "creditor" it does not seem helpful. Arguing on the basis of a different provision of the Act, Section 2(c), American Express argues that the state of issue or sale should be considered presumptively the residence of the creditor both in the case of travelers checks and telegraphic money orders (American Express Brief, *amicus curiae*, p. 22). American Express lists in Exhibit B to its brief *amicus* twelve States which it states has enacted this provision of the Uniform Act.

State has no such statute, the domiciliary State of the debtor may take the funds. This is basically New York's position,[9] though it does not treat *Texas v. United States* as retroactive and therefore claims all funds for orders purchased from 1930 to 1958 regardless of the address of the creditor and it also claims the right to take the unclaimed funds where the address of the creditor is contained in Western Union's records, but the connection of that address with a particular transaction is not "feasible."

(2) The ruling of the Court in *Texas v. New Jersey* should be interpreted, or modified, to select the State where the Western Union office originating the transaction is located. The underlying reason for this suggestion is that under New York's interpretation of *Texas v. New Jersey* all, or nearly all, of the funds would go to New York. The selection of the office of origin as determinative would result in a division of the funds roughly in proportion to the amount of business originating in each State. This solution can be brought within *Texas v. New Jersey* only by treating the office of origin as presumptively the residence of the creditor. With variations, this is the position of Pennsylvania, Connecticut, California, Indiana, Oregon and Virginia.[10]

(3) A third solution would treat the address of the person named as the payee of the money order as determinative on the theory that the payee, not the sender, is to be considered the creditor. This is the position of Florida and Arizona.

An action to escheat property is generally considered an *in rem* proceeding. *Standard Oil Co. v. New Jersey*, 341 U.S. 428. If the item is a tangible object, title or custody

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[9]New York's statute and claim are based on the address of the purchaser of the money order and New York treats the purchaser as the creditor.

[10]This rule would be varied when a draft in payment of a money order, or a draft covering a refund, had been issued but not presented for payment. The address of the payee of the draft or, in the absence of such address, the state where it was issued would govern.

may be taken by a State when it can physically seize it, although due process requires appropriate notice to claimants and opportunity to be heard. See Andrews, *Situs of Intangibles*, 49 Y.L.J. 241. The situs of intangibles assets is more difficult and it appears that courts have come to different conclusions depending on the nature of the proceedings, such as attachment, garnishment, taxation, or escheat, and the nature of the asset itself, such as bonds, bank deposits, insurance policies, fiduciary accounts, or other debts. See Report of the Special Master, Hon. Walter A. Huxman, in *Texas v. New Jersey*, No. 13, Original, pages 23 to 29. See also *Severnoe Securities Co. v. London Lanchashire Ins. Co.*, 255 N.Y. 120, 174 N.W. 229 (1931). And indeed statutes dealing with escheat themselves distinguish between various types of obligation. *See, e.g., Uniform Disposition of Unclaimed Property Act*, Uniform Laws Annotated, volume 9A.

In this case the nature of Western Union's obligation appears to the Special Master to be that of a common debt,[11] not dissimilar to the types of obligations considered by this court in Texas against New Jersey.[12] As to the nature of the proceeding here involved, it may be that a legal distinction can be found between an escheat proceeding, which terminates the claim of former owners, and a proceeding merely to take custody of abandoned property, which will not affect the claim of adverse claimants. See *Standard Oil Co. of New Jersey v. New Jersey*, 341 U.S. 428. It can be

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[11] Connecticut bases its claim, which roughly coincides with that of Pennsylvania, on the theory that the obligation is in the nature of a fiduciary account (Conn. Brief, page 6). The Special Master has difficulty in accepting this analysis, but since Pennsylvania and the other States aligned with it reach the same conclusion on the basis that the relationship is that of debtor and creditor, it does not seem necessary to resolve this difference. Presumably Connecticut was impelled to press its position because of the language of its escheat statute.

[12] The items involved in *Texas v. New Jersey* included unpaid wages, amounts due for goods and services, royalty payments and dividends. See *Texas v. New Jersey*, 379 U.S. 674, 675, f.n. 4.

argued that since in custodial taking only the right to hold and use the money will be shifted from Western Union to a State the interests of the prior owners are not affected. The Special Master cannot accept this argument. Even in the case of mere custodial taking the property interests of the claimants are vitally affected. Possession is a very real element of ownership. Moreover, this is the time, if ever, that they will receive notice and an opportunity to be heard. After a custodial taking, there is no indication that a State will undertake further proceedings and therefore the owners will practically be divested of their interests. The fact that these are small claims and that it cannot be anticipated that claimants will in any material number of cases assert their claims does not affect the legal situation. Therefore, it is the Special Master's conclusion that the same formula should be followed for escheat and custodial taking.

In determining whether a departure from the formula set forth in *Texas v. New Jersey* is justified, the first step is to examine how an application of the formula to this factual situation would work in practice. Presumably a State seeking escheat has the burden of establishing the facts basic to its authority. Thus, in order for New York to take as the domiciliary state of the debtor, it would have to establish as to all escheatable items the absence from Western Union's records of an address for the creditor. It would not suffice under the ruling of *Texas v. New Jersey* to establish that it would be difficult or expensive to search the records for this information. The apparent agreement of all the parties that the ascertainment of the addresses is not "feasible" is probably based on the fact that Western Union's ledgers do not give the necessary information and that a search of 200,000 transactions with 300,000 ledger entries would be necessary at a cost of $175,000.00 (Stipulation, page 16).[13]

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[13]The Special Master makes no suggestion as to whether the cost of such a search must be borne by the State undertaking to escheat the unclaimed funds, or whether the cost can be imposed on Western Union under some sort of reporting requirement.

It is not possible from the stipulated facts to form a judgment as to what number of items said to have no creditors' addresses in the records are so listed because of the failure of the sender to include his address on the application form and how many are so listed because it is difficult from the records to associate an item with the underlying papers.

The Pennsylvania argument that the situation in this case varies fundamentally from that covered by Texas against New Jersey seems to have two bases.

First, Pennsylvania appears to argue that not only must the records show addresses of the parties to the transaction but they must identify one of the parties as the creditor. There is no question that Western Union's records are in terms of the "sender" and "sendee" of the order. When drafts had been issued, the records do not identify a "payee" or refer to him as a "creditor." Western Union and New York both analyze the contract as making the sender the creditor for money which cannot be refunded when the "sendee" cannot be found within the 72-hour limit and the contract has been cancelled. They consider the sendee as the creditor when a draft has been issued but not cashed. The Special Master agrees that this analysis is correct. Moreover, the Special Master does not read the ruling of this court in Texas against New Jersey as requiring such an identification in the records. If the records show an address which a State can establish as the address of a creditor, that should meet the test.

The second objection of Pennsylvania seems to be bottomed on the argument that when the Supreme Court referred to the records of the debtor, it meant formal ledgers or books of account and excluded such documents as the applications for money orders which are here involved. This is nowhere explicitly stated, but it can be deduced from Pennsylvania's failure to take into account the instances where the addresses of the parties are filled in on the application. Whether that be the interpretation of Pennsylvania or not, it is not acceptable to the Special Master. It is clear

that the applications have been retained by Western Union and are available for study and analysis. The Special Master finds that these applications are part of the records of Western Union within the meaning of *Texas v. New Jersey*. Otherwise the power to determine between the rival claimants for unclaimed monies would be delegated to the debtor which could enter the addresses upon its ledgers or not and thus affect the rights of the claimants.

As stated above, the underlying reasoning behind Pennsylvania's argument is that it would result in a more equitable distribution of the unclaimed funds. The principle difficulty with this solution is that it gives rise to a serious question as to the legality of cutting off or impairing an individual's property rights by an *in rem* proceeding in the state of origin. This is stretching the reasoning of *Texas v. New Jersey* to a perhaps unreasonable limit. We start from the proposition that the domicile of the creditor is a reasonable place to seize an intangible debt on the basis of the rule "mobilia sequntur personam." *Blodgett v. Silberman*, 277 U.S. 1, 9-10. In *Texas v. New Jersey* this rule was applied to permit the domicile of the creditor to be determined by the last known address as it appeared on the creditor's books. The court recognized that in some instances there might be variances between the company records and the actual address of the creditors but accepted the record addresses neverthless since "any errors thus created . . . probably will tend to large extent, to cancel each other out." However, the Pennsylvania formula would rely on a factor which does not even purport to be an address of the creditor, but merely an office where he was physically present to buy a money order. Frequently, perhaps usually, this office and his domicile will coincide, but it is clear that money orders must frequently be bought away from home. Consider, for example, the number of New Jersey and Connecticut residents who must buy telegraphic money orders in New York City or the number of Virginia and Maryland residents who must buy money orders in the District of Columbia. The Court's opinion in Texas against New Jersey specifically

disclaims that its determination was based upon constitutional requirements. However, I do not conceive that this means that the holding of *Pennoyer v. Neff*, 95 U.S. 714, and its progeny is entirely abandoned and that the rights of owners of intangible property may have their property rights cut off or adversely affected by state action in an *in rem* proceeding in a forum having no continuing relationship to any of the parties to the proceedings. Rather, I assume that the court meant that in choosing among the theories presented in that case, there were no constitutional restrictions which dictated which of those theories could be accepted. The rivals there were Texas, where most of the transactions occurred and where the funds to pay the debts were held; the State of domicile of the debtor, that is, New Jersey; the principal place of business of the debtor, that is Pennsylvania; and the State of residence of the creditors as evidenced by their addresses on the debtor's books. Since the Court noted that it was under no constitutional compulsion to elect between these States, it can be assumed that insofar as constitutional power to take the property be escheat is concerned, it existed in any one of these jurisdictions.

However, it goes far beyond the holding in *Texas v. New Jersey* to assume such constitutional power merely because the office of origin is in a particular jurisdiction when there is no other indication of the address of the parties. All that this shows is that the sender had been in that jurisdiction, perhaps only for an hour, perhaps for a day. Even though a stated address may not be a fool proof determination of residence it does constitute a conscious selection of a State by a party to the transaction whereas the office of origin might be only a matter of chance or convenience. Therefore, I cannot find in *Texas v. New Jersey* any real support for the constitutionality of a taking under the formula proposed by Pennsylvania.[14]

[14]Pennsylvania alleges in a Supplemental Memorandum at pages 1 and 2 that the issue of constitutionality is not involved in the present proceeding. The Special Master believes that the validity of the tak-

Even greater doubt exists with respect to Florida's proposal that the Western Union office where the order is to be paid should govern. When a draft has been issued to a payee, but not cashed, his address would certainly be an appropriate place to fix the right of escheat. But where the order has been cancelled under its terms because the payee has not appeared or accepted the funds, then the payee seems to have no further interest in their disposition while the sender has a contract right to a refund. To cut off this right by an *in rem* proceeding in the state of destination is even more difficult constitutionally than is Pennsylvania's suggestion.

These doubts as to the constitutionality of the alternative formulas for escheat support the conclusion that the simple and workable formula established by the court in *Texas v. New Jersey* should be followed with respect to telegraphic money orders which are here involved. As in the case of the obligations in that case, this rule presents an easily administered standard preventing multiple claims and giving all parties a fixed rule on which they can rely.

CONCLUSION

I accordingly conclude that the Court's formula set forth in *Texas v. New Jersey* for the escheat or custodial taking of intangible claims such as ordinary debts should be applied to unpaid telegraphic money orders. Any sum now held by Western Union unclaimed for the period of time prescribed by the applicable State statutes may be escheated or taken into custody by the State in which the records of Western Union placed the address of the creditor, whether that creditor be the payee of an unpaid draft, the sender of a money order entitled to a refund, or an individual whose claim has been underpaid through error. Still following the

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ing from the viewpoint of the former owners must be a factor in choosing among possible takers.

formula of *Texas v. New Jersey*, if no address is contained in the records of Western Union, or if the State in which the address of the creditor falls has no applicable escheat law, then the right to escheat or take custody shall be in the domiciliary State of the debtor, in this case, New York.

New York's claim that this formula should not be applied to escheats the time period for which expired prior to the date of this Court's judgment in *Texas v. New Jersey* is supported neither by argument nor reason. The Special Master recommends that the formula be applied to all the items involved in this case regardless of the date of the transactions out of which they arose.

Each of the States which is a party hereto, including intervenors, should bear in equal parts the costs of this suit, including the expenses of the Special Master and compensation to him to be fixed by the court. The defendant, Western Union Telegraph Company, should not bear any part of the costs.

RECOMMENDED DECREE

In accord with my findings and conclusions, I recommend the entry of a decree in the following form:

It is now Ordered, Adjudged, and Decreed as follows:

Each item of property in question in this case as to which a last known address of the person entitled thereto is shown on the books and records of the defendant, Western Union Telegraph Co., is subject to escheat or custodial taking only by the State of that last known address, as shown on the books and records of defendant, Western Union Telegraph Company, to the extent of that State's power under its own laws, to escheat or take custodially.

2. Each item of property in question in this case as to which there is no address of the person entitled thereto shown on the books and records of defendant Western Union Telegraph Company is subject to escheat of custodial taking only by New York, the State in which Western Union

Co. was incorporated to the extent of New York's power under its own laws to escheat or take custodially, subject to the right of any other State to recover such property from New York upon proof that the last known address of the creditor was within that other State's borders.

3. Each item of property in question in this case as to which the last known address of the person entitled thereto as shown on the books and records of defendant Western Union Telegraph Company is in a State the laws of which do not provide for the escheat of such property, is subject to escheat or custodial taking only by New York the State in which Western Union Telegraph Company was incorporated, to the extent of New York's power under its own laws to escheat or to take custodially, subject to the right of the State of the last known address to recover the property from New York if and when the law of the State of the last known address makes provisions for escheat or custodial taking of such property.

Respectfully submitted,

JOHN F. DAVIS
Special Master

November, 1971

JAN 18 1972
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff,

and

STATE OF CONNECTICUT,
Intervenor-Plaintiff,

vs.

STATE OF NEW YORK, ET AL,
Defendants.

EXCEPTIONS OF INTERVENOR-PLAINTIFF STATE OF CONNECTICUT TO REPORT OF SPECIAL MASTER

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EXCEPTIONS OF INTERVENOR-PLAINTIFF STATE OF CONNECTICUT TO REPORT OF SPECIAL MASTER

The Intervenor-Plaintiff State of Connecticut excepts to the report of the Special Master in several respects.

The Special Master has injected a constitutional issue into this case where none exists. As stated in our brief at page 4, the only question presented in this case is which of the various states is entitled to custody of the escheatable moneys held by Western Union. The rights of persons having an interest in the moneys are not in issue. Regardless of which position this Court adopts, the rights of individuals will not be affected. Whether the state of origin of the money order, the state of destination of the money order, or the state of domicile of Western Union is allowed by

this Court to take custody of the moneys, persons having an interest in said moneys may file claims in accordance with statutory procedures in effect in the custodial state. We, therefore, submit that the rationale of *Penoyer* v. *Neff*, 95 U.S. 714, was erroneously considered and applied by the Special Master in the instant case.

Further, since the issue in this case is not controlled by constitutional or statutory provisions, this Court should follow its intention articulated in *Texas* v. *New Jersey*, 379 U.S. 674, 681, "to distribute escheats among the States in proportion of the commercial activities of their residents." Certainly, adopting the proposition that the state of origin of the money order should take custody of the moneys would carry out the announced intention of this Court while the conclusion of the Special Master that the state of domicile of Western Union should take custody would completely frustrate that intent.

The Special Master noted that the senders of some money orders were not residents of the states in which those money orders originated and therefore concluded that the state of origin formula should not be adopted. We concede the statement of the Special Master, but we submit the percentage of such non-resident senders is extremely low in comparison to the overall total of senders and should not be made the basis for dismissing the proposal that the state of origin take custody of such moneys. As this Court stated in the *Texas* case at page 681:

> "It may well be that some addresses left by vanished creditors will be in States other than those in which they lived at the time the obligation arose or at the time of the escheat. But such situations probably will be the exception, and any errors thus created, if indeed they could be called errors, probably will tend to a large extent to cancel each other out."

While we also recognize the validity of the Special Master's argument that the Pennsylvania formula is based on a rebuttable presumption of residence in the state of the sender, we submit that that technical aspect of the formula is far outweighed by the end result which would be the equitable distribution of unclaimed funds among the several states.

CONCLUSION

For all of the above reasons as well as those advanced in its brief filed with the Special Master, the Intervenor-Plaintiff State of Connecticut respectfully submits that this Court reject the Report of John F. Davis, Special Master and adopt the formula urged by the State of Pennsylvania and concurred in by the States of Connecticut, California and Indiana.

Respectfully submitted,

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January 11, 1972

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In the Supreme Court of the United States

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No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff

and

STATES OF CONNECTICUT, CALIFORNIA and INDIANA,
Intervening Plaintiffs

v.

STATES OF NEW YORK, FLORIDA, OREGON and VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,
Defendants

and the

STATE OF ARIZONA,
Intervening Defendant

EXCEPTIONS OF PLAINTIFF, COMMONWEALTH OF PENNSYLVANIA, TO REPORT OF SPECIAL MASTER

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SUMMARY OF ARGUMENT

The Special Master's Report asserts, as a Conclusion to his Findings of Fact and Discussion, that "the Court's formula set forth in *Texas v. New Jersey* (379 U.S. 674) for the escheat or custodial taking of intangible claims such as ordinary debts should be applied to unpaid telegraphic money orders".

The rule for ordinary debts cannot be assimilated to the unclaimed amounts of telegraphic money orders. The company does not keep records of the last known address of the persons entitled to the money except to the extent that the telegraphic money order form provides a place for the purchaser's insertion of his address therein. The company does not require the purchaser to fill in his address, and in many cases the purchaser fails to do so.

In a money order transaction, Western Union receives a deposit in an office in the State where the money order is purchased, and assumes a duty to deliver a like amount elsewhere. If it cannot make delivery within 72 hours, the office in which it receives the money is directed to refund to the sender (purchaser) of the money order the amount he deposited there. No other state than the state of deposit and refund figures in the transaction where the money order is not carried out.

Texas v. New Jersey was an exercise by the Supreme Court of its constitutional power to determine

controversies between States. In the exercise of that power, the Court was guided by considerations of fairness and equity among the States, and the rules there declared were so declared to accomplish the desired fairness and equity. In the present case only one State is involved under the money order transaction, the State of origin, which is also the State of refund. It is the only State giving the benefit of its economy and laws to the deposit and refund. To apply here the no address rule of *Texas v. New Jersey* without considering the purpose of the Court in that case to accomplish fairness and equity among the States, would be to defeat such purpose here.

The rule required by the money order transaction where payment has not been effected nor refund made is that the State of origin of telegraphic money orders is the State entitled to the escheat or custody of unclaimed amounts of money orders, to the extent of that State's power under its own laws to escheat or take custody; if it cannot be determined from the books and records of the company which State is the State of origin, then the State of Western Union's domicile is entitled to the escheat or custody of the said intangibles, to the extent of that State's power under its own laws to escheat or take custody.

Pennoyer v. Neff, 95 U.S. 714, cited by the Special Master, is not involved in the present proceeding, the purpose of which is to determine which State has the primary right of escheat or custody of the unclaimed amounts of telegraphic money orders. No matter which State is held to have such primary right, it will be required, in proceedings exercising

such right, to meet whatever requirements of *Pennoyer v. Neff* "and its progeny" are applicable to such proceedings. It is premature in the present action to consider what procedural requirements are imposed by *Pennoyer v. Neff*.

ARGUMENT

The Special Master has concluded that the no address formula set forth in *Texas v. New Jersey,* 379 U.S. 674, for the escheat or taking of intangible claims such as ordinary debts, should be applied to unpaid telegraphic money orders.

A reading of the opinion in *Texas v. New Jersey* indicates that the no address rule in that case should not be applied here.

In *Texas v. New Jersey,* the Court was guided by the aim of fairness and equity among the States, and it was felt that fairness and equity would be accomplished by the no address rule suggested by the Master in that case, because under th facts in that case, such rule would tend to distribute escheats among the States in the proportion of the commercial activities of their residents. It must be believed that if the Court had felt that under the facts in that case, the no address rule would not have tended to distribute escheats among the States in the proportion of the commercial activities of their residents, and had not met the aim of fairness and equity among the States, the said rule would not have been adopted.

In the present case, the company never makes entries on its records showing the address of the sender. The only place where the address of the sender may appear is on the money order application if the sender fills in the blank provided for such informa-

tion, and the record shows that in many cases the sender does not fill in such blank. To hold that the no address rule of *Texas v. New Jersey* applies where the sender has not filled in this blank would be to give the moneys to New York, the State of Western Union's domicile. But, as said in *Texas v. New Jersey,* "in deciding a question which should be determined primarily on principles of fairness, it would too greatly exalt a minor factor (domicile of the obligor), to permit escheat of obligations incurred all over the country by the State in which the debtor happened to incorporate itself."

In *Texas v. New Jersey,* the Court favored the rule which it adopted because by that rule "administration and application of escheat laws should be simplified". In the present case, the application of the no address rule, by itself, would require an examination of every money order application, one by one, to determine whether the sender has filled in the blank for his address. According to Western Union estimates, as set forth in the Stipulation, it would cost as much as $175,000.00 to make such examination and reduce the information obtained to reportable form. The total of the amounts involved in the present case is between $1,000,000.00 and $1,500,000.00.

It is unlikely that any one State would be entitled to escheat more than 10% of such total of $1,000,000.00 or $1,500,000.00, and if a State seeking the escheat or custody of the amount to which it might be entitled were compelled to expend such amount of $175,000.00 to recover an equivalent amount or less,

this would be a deterrent to every State, except perhaps the State of Western Union's domicile. The result might be that the money would remain in the hands of Western Union, as has been the case until the present time.

Western Union does not seek to retain the fund, and has said in its brief filed with the Master that it would not oppose Pennsylvania's proposal, which "appears to be fair, equitable and feasible. Its adoption would strongly promote ease of administration and would be well calculated to avoid onerous record keeping and new burdens upon commerce in telegraphic and 'express' money transfers".

The rule which Pennsylvania proposes is that the State of origin of a telegraphic money order be held to be the State entitled to the escheat or custody of the unclaimed amounts of such money orders. The ledger records maintained by the company show the location of the office of origin in each case, and there would be no necessity of examining any telegraphic money order to obtain this information.

The adoption of the rule suggested by Pennsylvania does not mean a special rule for this one case. There are many situations in which the obligor does not keep records of the addresses of its creditors or obligees. Money orders sold over the counter, not only by Western Union, but also by American Express and other organizations, are sold without any record whatsoever of addresses of the purchaser or the person to whom the money order is sent. (See brief amicus curiae of American Express Company). As to such express money orders sold over the coun-

ter "the only information retained by the company on such money orders is the serial number, date and *place of sale* and amount". (Stipulation, par. 56 note 10) (Emphasis ours.)

Other familiar situations in which no information is obtained by the obligor as to identity or address of the "creditor" are the familiar "gift certificates", "trading stamps", "tokens" and "tickets" issued by transportation companies. These are but a few of the various kinds of transactions in which no record of the identity or address of the "creditor" is obtained or maintained by the obligor, and which, by reason of the ambulatory habits and nature of American life and business, frequently extend or cross over State lines.

Just as it was necessary in *Texas v. New Jersey,* in the interest of fairness and equity among the States, that rules be adopted to settle which State is allowed to escheat or take custody of intangibles of the kinds as to which the identity of the creditor and his address might be ascertained from the books and records of the debtor, where it kept such records, so also, it is necessary that a rule or rules be adopted to settle which State shall be allowed to escheat or take custody of amounts due on intangibles arising from transactions of the kinds in which the debtor does not maintain such records.

It is, therefore, submitted that the following rule be adopted:

> "The state of origin of a telegraphic money order, as shown by the company's records, is the

only State entitled to escheat or custody of unclaimed moneys arising from the money orders to the extent of that State's power under its own laws to escheat or to take custodially."

Or, that a more general rule be adopted reading as follows:

"Where a transaction is of the type as to which the obligor does not make entries upon its books and records showing the address of the obligee, the State of origin of the transaction, as shown by the books and records of the obligor, is the only State entitled to the escheat or custody of the intangible arising from such transaction, to the extent of that State's power under its own laws to escheat or take custodially; or

"Where the state of origin of the transaction is not shown on the obligor's books and records, the State of the obligor's incorporation is the State entitled to the escheat or custody of the intangible, to the extent of that State's power under its own laws to escheat or take custodially."

The Special Master has referred to *Pennoyer v. Neff*, 95 U.S. 714, as imposing certain procedural requirements upon the escheating State. Such procedural requirements must be met when an escheat or custodial action is instituted, but it is submitted that such matters have been prematurely considered in the present case by the Special Master.

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IN THE

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OCTOBER TERM, 1970

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA, *Plaintiff*,

and

STATES OF CONNECTICUT, CALIFORNIA, AND INDIANA,
Intervening-Plaintiffs,

vs.

STATE OF NEW YORK, ET AL., *Defendants*.

EXCEPTIONS OF INTERVENING PLAINTIFF STATE OF INDIANA TO REPORT OF SPECIAL MASTER

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STATE OF NEW YORK, ET AL., *Defendants*.

EXCEPTIONS OF INTERVENING PLAINTIFF STATE OF INDIANA TO REPORT OF SPECIAL MASTER

I

Typographical Errors

The second paragraph in the Special Master's Recommended Decree reads as follows:

> "2. Each item of property in question in this case as to which there is no address of the person en-

> titled thereto shown on the books and records of defendant Western Union Telegraph Company is subject to escheat *of* custodial taking only by New York, the State in which Western Union Co. was incorporated to the extent of New York's power under its own laws to escheat or take custodially, subject to the right of any other State to recover such property from New York upon proof that the last known address of the creditor was within that other State's borders." (Emphasis added)

From a grammatical point of view, the emphasized word "*of*" is a typographical error. We call the Court's attention to the first paragraph of the Recommended Decree which reads as follows:

> "Each item of property in question in this case as to which a last known address of the person entitled thereto is shown on the books and records of the defendant, Western Union Telegraph Co., is subject to *escheat or custodial taking* only by the State of that last known address, as shown on the books and records of defendant, Western Union Telegraph Company, to the extent of that State's power under its own laws, to escheat or take custodially." (Emphasis added)

There is no reason for the Special Master to use a different phrase in the second paragraph then he did in the first paragraph of his Recommended Decree, especially when he specifically stated that in the formula for distribution of funds in question the same formula should be followed for both escheat and custodial taking. See page 16 of Report of John Davis, Special Master. The third paragraph of the Recommended Decree reads as follows:

> "3. Each item of property in question in this case as to which the last known address of the person entitled thereto as shown on the books and records

> of defendant Western Union Telegraph Company is in a State the laws of which do not provide for the *escheat* of such property, is subject to escheat or custodial taking only by New York the State in which Western Union Telegraph Company was incorporated, to the extent of New York's power under its own laws to escheat or to take custodially, subject to the right of the State of the last known address to recover the property from New York if and when the law of the State of the last known address makes provisions for escheat or custodial taking of such property." (Emphasis added)

From reading this paragraph as a whole and from the Master's conclusion that the same distribution formula should apply in both states of escheat or custodial taking the phrase "or custodial taking" should be inserted right after the word "*escheat*" as emphasized above.

II

The Special Master Has Misinterpreted the Case of Texas v. New Jersey in Giving to New York a Windfall in Unclaimed Money Orders Where the Last Known Address of the Sender Is Not Shown on the Books and Records of the Western Union Telegraph Company but Where the State of Origin Is Shown in Its Records

In looking at the second paragraph of the Master's Recommended Decree it is respectfully submitted that he has misinterpreted *Texas v. New Jersey*, 379 U.S. 674 (1965). At the end of its opinion in that case the Court stated as follows:

> "We realize that this case could have been resolved otherwise, for the issue here is not controlled by statutory or constitutional provisions or by past

> decisions, nor is it entirely one of logic. It is fundamentally a question of *ease of administration and equity*. We believe that the rule we adopt is the fairest, is easy to apply, and in the long run will be the most generally acceptable to all the States." (Emphasis added) 379 U.S. 674 at 683.

It is respectfully submitted that the Special Master, in his Recommended Decree, applied the solution reached in the specific *Texas v. New Jersey, supra,* fact situation, and he did not give proper consideration to the rationale as set forth in the foregoing quotation. The result is a Recommend Decree which is neither equitable nor easy to administer.

The inequities of the Special Master's proposed decree. The Special Master's proposed Decree is inequitable in that it provides a windfall for the State of New York based upon the historical accident of being the state where the defendant Western Union Telegraph Company is incorporated, notwithstanding the fact that it does business all over the United States. The Court in *Texas v. New Jersey, supra,* disapproves of minor factors playing a major part in the resolution of disputes of this nature. Under the circumstances of this case if this Court will allow New York to escheat or custodially take those funds as to which, on the books and records of the defendant Western Union, there is no last known address of the person entitled thereto without properly taking into consideration the location where the money order originated, this Court would be allowing a minor factor to play a major determinative role in the resolution of this conflict. It should be brought to the attention of the Court that in the *Texas v. New Jersey, supra,* fact situation, the intangibles in question were, for the most part, uncashed checks or other intangibles paid on various and sundry types of accounts, and when the last known

address of the creditor was not shown on the books and records of the debtor or holder, a universally common factor analogous to the state of origin of the money orders in question in the case at bar did not exist.

As reason for his Recommended Decree, the Special Master stated that it cannot be presumed that the sender resided in the state where the telegram originated. As a factual matter this may be true in some instances. However, it is apparent that the errors inherent in the presumption that the state of origin of the money order is the state of residence of the sender would cancel each other out. The principle based upon this assumption was applied in *Texas v. New Jersey, supra,* when the Court considered the possibility that the last known address of the creditors or persons entitled to the unclaimed intangibles, as shown on the books and records of the corporation, may not always be their last known addresses at a later time. We respectfully submit that if the errors balanced themselves out in the *Texas v. New Jersey, supra,* situation, they would also balance themselves out under the circumstances in the case at bar. It is respectfully submitted that the application of the principle of balancing errors would provide a more equitable distribution of the funds in question than would the rejection of this principle as reflected by the Special Master in the second paragraph of his Recommended Decree.

It should also be brought to the attention of the Court that by virtue of the application of Paragraph 3 of the Special Master's Recommended Decree, there are, as shown in Exhibit 26 of the Stipulation of Facts in this case, nineteen states which, generally speaking, do not have statutes related to unclaimed telegraphic money orders. If the recommended decree of the Special Master is adopted as it stands, New York would be receiving the proceeds of not

only unclaimed telegraphic money orders originating in those states as listed in Exhibit 26 of the Stipulation of Facts but also from states with statutes which provide for escheat or custodial taking of unclaimed telegraphic money orders but which cannot come forward to prove that the individuals entitled to the funds were its residents.

The Special Master's proposal is difficult to administer. The Special Master's proposed Decree, if adopted by this Court, would lend itself to further litigation. As to those telegraphic money orders for which there is no last known address of the sender upon the books or records of the corporation, litigation is sure to arise on the issue of the state of residency of the sender at the time that the money order was sent. This is contrary to the spirit of *Texas v. New Jersey, supra.*

CONCLUSION

For the foregoing reasons the proposed Decree of the Special Master should be rejected and a decree adopting the principles stated herein should be adopted by this Court.

Respectfully submitted,
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

and

STATE OF CONNECTICUT,

Intervenor-Plaintiff,

vs.

STATE OF NEW YORK, ET AL,

Defendants.

EXCEPTIONS OF DEFENDANT STATE OF FLORIDA TO REPORT OF SPECIAL MASTER

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

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STATE OF CONNECTICUT,

Intervenor-Plaintiff,

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STATE OF NEW YORK, ET AL,

Defendants.

EXCEPTIONS OF DEFENDANT STATE OF FLORIDA TO REPORT OF SPECIAL MASTER

The Defendant State of Florida excepts to the report of the Special Master on the following grounds:

(1) The Special Master has concluded that the issue in this case is controlled by constitutional considerations, contrary to the decision of this

Court in Texas v. New Jersey that "the issue here is not controlled by. . .constitutional provisions or by past decisions. . . ." 379 U.S. 674, 683.

(2) The Special Master has improperly concluded that a custodial taking by the state shown on the debtor's records as the place for payment or purchase would unlawfully impair the individual creditor's property rights, when such a taking protects those rights more fully than any of the alternative claims asserted in this case.

(3) In concluding that the custodial claim to unclaimed money order funds by the state of original destination or payment is cut off by the sender's contract right to refund, the Special Master overlooks the fact that the only funds involved in this proceeding are those which have not or cannot be refunded and which became and remained unclaimed from the time the obligation to the original payee accrued.

(4) In concluding that the place designated on debtor's records for payment of money order funds does not constitute a creditor's address according to the debtor's books, within the rule of Texas v. New Jersey, supra, the Special Master has construed that decision to require a technically complete address supplied by the creditor to establish a factual foundation for a finding of legal residence, when the decision instead is based on a rule of equity and expedience and a presumption of residence which in the absence of contrary evidence is adequately supported by a debtor's record of the address at which payment is to be made to a creditor.

For these reasons, as well as those more fully stated in brief filed by the Defendant State of Florida before the Special Master, the Court is urged to reject the report filed herein and adopt the rule of distribution set out in defendant's brief.

Respectfully submitted,

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IN THE

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Defendants.

PROOF OF SERVICE

I, Winifred L. Wentworth, Assistant Attorney General of the State of Florida, hereby certify that I am one of the attorneys for the defendants, State of Florida, that I am a member of the Bar of the Supreme Court of the United States, and that on the 26th day of January, 1972, I served copies of the foregoing Exceptions of Defendant State of Florida to Report of Special Master, on each of the parties by depositing such copies in a United States Post Office, addressed as follows:

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JAN 28 1972

IN THE

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October Term, 1970

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff,

and

STATES OF CONNECTICUT, CALIFORNIA, and INDIANA,
Intervening Plaintiffs,

v.

STATES OF NEW YORK, FLORIDA, OREGON and VIRGINIA, and the WESTERN UNION TELEGRAPH COMPANY,
Defendants,

and the

STATE OF ARIZONA,
Intervening Defendant.

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF AMERICAN EXPRESS COMPANY

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Defendants,

and the

STATE OF ARIZONA,

Intervening Defendant.

MOTION OF AMERICAN EXPRESS COMPANY FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

American Express Company ("Amexco") respectfully moves this Court for leave to file the accompanying brief as *amicus curiae.* The Attorneys General of the States of Arizona, California, Connecticut, Florida, Indiana, Oregon, Pennsylvania and Virginia, and the General Counsel for the defendant Western Union Telegraph Company ("Western Union") have consented to the filing of this brief. The Attorney General of the State of New York has refused such consent.

Statement of Interest

Amexco, one of the largest issuers of travelers checks and commercial money orders in the nation, has supported since the beginning of this proceeding,[1] and for a number of years prior thereto, the promulgation of a single rule respecting the escheat of abandoned property which could be applied with fairness and ease to the widest possible range of commercial instruments for the transfer of money. The Special Master granted Amexco's motion for leave to file its brief *amicus curiae* in the proceedings before him, but noted at a conference on November 12, 1970:

> ". . . American Express could not ask for answers to its peculiar problems in the [instant case], except insofar as the rules applicable to telegraphic money orders would, by implication, apply to travelers checks. However, he stated that he thought it appropriate to consider the American Express travelers checks and any other similar instruments, insofar as the disposition of unclaimed funds from such transactions shed light on a proper disposition of unclaimed funds arising from Western Union telegraphic money orders." *Report,* p. 4.

For the reasons stated below this Court should grant Amexco's motion for leave to file the accompanying brief as *amicus curiae.*

I. Adoption of the Report of the Special Master without modification will result in serious injustices to issuers of commercial instruments and to the states involved.

Amexco urges that the conclusions and suggested decree of the Special Master be rejected by this Court because (1) they restrict the range of effect of the decision to telegraphic money orders issued by Western Union, (2) they portend future litigation in this Court respecting other forms of

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[1] *Report of the Special Master dated November, 1971* ("*Report*"), pp. 4-5.

instruments where specific addresses of the purchasers are not kept as a matter of business practice, such as travelers checks and commercial money orders, (3) they may promote needless changes in corporate domiciles of issuers of commercial instruments to avoid the impact of escheat laws and (4) they result in a distortion of the principles of *Texas* v. *New Jersey*, 379 U.S. 674 (1965).

In its brief to the Special Master, Amexco urged the adoption of an escheat rule based upon the factually sound presumption that the residence of the sender of the telegraphic money order will be deemed to be in the state of origin of the transaction, until proved otherwise. The Special Master erroneously refused to consider this rule on its merits because he believed that its adoption would be inconsistent with the constitutional principles underlying *Pennoyer* v. *Neff*, 95 U.S. 714 (1877). This Court should have the opportunity to examine Amexco's objections to the *Report* and consider fully the impact of such a potentially limiting decision.

II. Amexco's financial interest in the decision of this case is substantial.

Amexco's immediate financial interest in the outcome of this case can be highlighted in monetary terms. Prior to the decision in *Texas* v. *New Jersey* in 1965, Amexco paid New York the entire proceeds (with two exceptions[2]) of its travelers checks and money orders deemed abandoned under New York's Abandoned Property Law,[3] regardless of the laws of the place where such instruments were sold. After that decision, Amexco began withholding from New York

[2] Proceeds from abandoned instruments sold in New York and Pennsylvania were not paid to New York because of litigation against Amexco in these states.

[3] N.Y. Abandoned Property Law, § 1309 (McKinney's 1969).

the proceeds of all travelers checks sold in any other state which had an applicable escheat statute. As a result, Amexco has withheld the sum of $2,221,200[4] representing proceeds of travelers checks deemed abandoned after 15 years pending a decision as to whether the state where the instrument was sold or New York, the state of Amexco's domicile, is entitled to the fund. With respect to the proceeds of travelers checks sold in New York and in any state which has no applicable statute, Amexco has continued to pay such funds to the State of New York.

In addition, Amexco began withholding from New York the proceeds of certain money orders deemed abandoned after 7 years. In 1969 when New York amended Section 1309 of its Abandoned Property Law to adopt the place of sale or purchase test for money orders sold on and after January 1, 1958[5], Amexco began paying the states, such as California, which had an applicable statute (see Appendix A), the proceeds of money orders sold within their borders on and after January 1, 1958.

III. Amexco is uniquely situated to advocate a fair and practical approach to the problem of which states should be allowed to escheat abandoned commercial instruments.

As one of the largest issuers of travelers checks and money orders in the world, Amexco has had many years of

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[4] This amount, which represents the proceeds of abandoned travelers checks sold in approximately 30 states (computed as of the latest available date), is subject to increase as additional travelers checks become abandoned each year and is subject to decrease as checks outstanding more than 15 years are cashed and redeemed by Amexco.

[5] N.Y. Abandoned Property Law, § 1309(3); (McKinney's 1970) as amended by L. 1969 c. 1114, § 3, effective May 27, 1969. This statute was amended again in 1970 by L. 1970, c. 706, eff. May 12, 1970.

practical experience with abandoned property laws. In *Texas* v. *New Jersey, supra,* this Court in an analogous situation granted the Life Insurance Association of America ("Association") permission to file its brief *amicus curiae* in this Court, and it appears from reading the Association's brief that the Association made a significant contribution to the ultimate decision. Amexco respectfully submits that it, like the Association in *Texas* v. *New Jersey,* can make a useful contribution to the decision in the instant case.

In summary, Amexco submits that this Court should grant Amexco's motion in order to consider its arguments in favor of adopting the rule advocated by the Commonwealth of Pennsylvania to the effect that the residence of the sender of a Western Union money order will be deemed to be in the state of purchase of that service, until proved otherwise by another state. The adoption of this rule will make this Court's decision apply with equity to the widest range of commercial instruments. Not only is the rule Amexco supports in accord with the underlying rationale of *Texas* v. *New Jersey,* but it will be fair to all the states, easy to administer and compatible with modern concepts of escheat jurisdiction.

Respectfully submitted,

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IN THE

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STATE OF ARIZONA,

Intervening Defendant.

BRIEF AMICUS CURIAE OF AMERICAN EXPRESS COMPANY

Summary of Argument

American Express Company ("Amexco") respectfully submits that the Court should reject the conclusions and recommended decree as set forth in the Report of the Special Master dated November, 1971 ("*Report*") because

they are based upon a misapplication of constitutional law to escheat jurisdiction and upon a misconception of the principles underlying *Texas* v. *New Jersey,* 379 U.S. 674 (1965). The Court should adopt the state of purchase rule advocated by the Commonwealth of Pennsylvania because (1) it is in accord with *Texas* v. *New Jersey* and *Western Union Telegraph Co.* v. *Pennsylvania,* 368 U.S. 71 (1961); (2) it can be applied equitably to a wide range of commercial instruments and (3) it is fair to all the states, easy to administer and in accord with modern concepts of escheat jurisdiction.

General Statement

Amexco is concerned that because the Western Union Telegraph Company ("Western Union") telegraphic money order service has certain features peculiar only to it, a rule could evolve from the instant case which could lead to further and wasteful litigation among the states and could be injurious to both their interests and the interests of Amexco and other issuers of commercial instruments. Therefore the salient features of Amexco's travelers check and money order services are compared below with the telegraphic money order service of Western Union.

A. *Western Union:*

This statement assumes for the purpose of illustration that the purchaser of the service (the sender) wants to send money from a place in State A to a person (the payee) in State B. The sender goes to a Western Union office in State A, fills out an application and gives it to the company clerk together with the money to be sent and the charges for sending it. Although the application has spaces for the

sender's and the payee's names and addresses, in many cases the sender omits his address and the precise street address of the payee. *See Report,* Findings of Fact No. 7, p. 9; Stipulation of Facts, pp. 4-5. The sender gets a receipt and a telegraphic message is transmitted to the company's office in State B nearest to the payee directing that office to pay the money order to the payee. No instrument is issued during any part of the above-described step in the transaction. The payee is then notified by the State B office and, upon properly identifying himself, is given a negotiable draft which he can either endorse and cash at once or keep for use in the future. If, within 72 hours, the payee cannot be located for delivery of the notice or fails to call for the draft, the office of destination in State B notifies the sending office in State A. The sending office then attempts to notify the sender of the failure to deliver and, if successful in locating the sender, makes a refund to him by means of a negotiable draft which may be either cashed immediately or kept for use in the future.[1] Stipulation of Facts, p. 6; *Report,* p. 7. If the sending office is unsuccessful in locating the sender, the funds are held by Western Union to be disposed of ultimately as abandoned property.

B. *American Express Company:*

Amexco's travelers check and money order services present a much simpler situation (involving fewer relevant jurisdictions for escheat purposes) than the Western Union service. Since by its nature a travelers check[2] is designed for use in the future, there is no payee when Amexco or its

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[1] *See Western Union Telegraph Co.* v. *Pennsylvania, supra.*

[2] Amexco's travelers checks are issued in denominations of $10, $20, $50, $100 and $500.

selling agent (most of which are banks) delivers the instrument to the purchaser. In the case of a travelers check, Amexco or its selling agent usually requires the purchaser to fill out an application form which Amexco keeps for three years. In many cases the purchaser does not insert his address in the space provided on the application. However, Amexco or the selling agent inserts the serial numbers of the checks on the application at the time of sale and since Amexco has a computer record of the office or agent to which all its checks have been distributed for sale, Amexco knows, as the application forms are returned, the place of sale of its travelers checks.

When a commercial money order is sold, Amexco or its selling agent inserts the amount involved on the money order form and hands it to the purchaser, who fills in the payee's name at his convenience. Consequently, Amexco has no record of the name or address of the payee; nor of the purchaser as well.[3] However, the serial number of each money order distributed by Amexco is listed on a sales report which the selling agent completes by inserting the amount involved at the time of sale. This report is then returned to Amexco on a weekly or other regular basis with the net proceeds of the agent's money order sales.

Thus, from the information taken from the forms and reports[4] above mentioned and transcribed onto computer tapes, Amexco can readily determine the state in which each travelers check and money order is sold.

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[3] *See* footnote 10, p. 27 of the Stipulation of Facts.

[4] Amexco's paper records are ultimately destroyed in accordance with the Company's record retention and disposal procedures.

ARGUMENT

I. This Court Should Adopt the Rebuttable Presumption That Where no Specific Address is Available, the Residence of the Purchaser of a Money Order or Other Instrument for the Transmission of Money Will be Deemed to be in the State of Purchase of the Service as Shown by the Books and Records of the Issuer of such Instrument, Until Proved Otherwise.

The Special Master Erred in Foreclosing Factual Consideration of the Purchase-Residence Presumption.

The only question presented by this case is "which State has jurisdiction to take title to certain abandoned intangible personal property through escheat". *Texas* v. *New Jersey, supra,* 675.

Amexco asserts that the best answer to this question is to adopt tLe last known address or residence rule of *Texas* v. *New Jersey* and the presumption that the residence of the purchaser of a check, draft or money order or other instrument for the transmission of money will be deemed to be in the state of purchase of the instrument or service involved. Although the Special Master concedes that the domicile of the purchaser and the place or office of purchase will, "[F]requently, perhaps usually", coincide, *Report,* p. 18, he rejects the presumption and the state of purchase rule based thereon because he sees the choice of such rule as cutting off the individual owner's rights in the property. As he stated on page 18 of the *Report:*

> "The principle [sic] difficulty with this solution is that it gives rise to a serious question as to the legality of cutting off or impairing an individual's property rights by an *in rem* proceeding in the state of origin. *This is stretching the reasoning of Texas* v. *New Jersey to a perhaps unreasonable limit."* (Emphasis added)

Again in footnote number 14 on pages 19 and 20 of the *Report,* he states:

> "Pennsylvania alleges in a Supplemental Memorandum at pages 1 and 2 that the issue of constitutionality is not involved in the present proceeding. *The Special Master believes that the validity of the taking from the viewpoint of the former owners must be a factor in choosing among possible takers.*" (Emphasis added)

The Special Master rejected the state of purchase rule because he confused the requirement of due notice to the owner of the property with the issue of which state has the right to escheat the property involved. This confusion is evident in the following statement from pages 15 and 16 of the *Report:*

> "It can be argued that since in custodial taking only the right to hold and use the money will be shifted from Western Union to a State the interests of the prior owners are not affected. Even in the case of mere custodial taking the property interests of the claimants are vitally affected. Possession is a very real element of ownership. *Moreover, this is the time, if ever, that they will receive notice and an opportunity to be heard. After a custodial taking there is no indication that a State will undertake further proceedings and therefore the owners will practically be divested of their interests.*" (Emphasis added)

A reading of the statutes listed in Appendix A annexed hereto, wherein notice by publication to the owners is required whenever the states invoke their escheat laws, makes it abundantly clear that the position taken by the Special Master is erroneous.

Contrary to the Special Master's conclusion, this case does not involve the cutting off of property rights of the individual owner in such a manner as to invoke the rule of *Pennoyer* v. *Neff*, 95 U.S. 714 (1877). *Cf. Connecticut Mutual Life Insurance Co., et al.* v. *Moore, Comptroller of the State of New York*, 333 U.S. 541, 547 (1947). **The issue for decision here is only which state has *the superior power* to invoke its escheat laws.** As the Supreme Court said in *Texas* v. *New Jersey, supra*, on this very question:

> "We realize that this case could have been resolved otherwise, for the issue here is not controlled by statutory or constitutional provisions or by past decisions, nor is it entirely one of logic. It is fundamentally a question of ease of administration and of equity. We believe that the rule we adopt is the fairest, is easy to apply and in the long run will be the most generally acceptable to all the States." 379 U.S. 674, 683.

See Western Union v. *Pennsylvania, supra.*

Having raised a constitutional issue where none existed, the Special Master erred in foreclosing consideration of the state of purchase rule on its merits. In fact, the effect of the Special Master's decision is to distribute escheats to the state of corporate domicile which has no rational connection with the residence of the owner. Thus, the result of his recommended decision is to make it all the more certain as a practical matter that the owner, who is more than likely to reside in some other state, will miss seeing publication of the notice of escheat when the state of corporate domicile proceeds to take possession of the individual items in the fund.

Since federal constitutional considerations are not involved in this case, Amexco urges this Court to adopt the state of purchase rule supported by the Commonwealth of Pennsylvania and most of the other states in this proceeding. This rule is that the residence of the purchaser of a

money order or travelers check will be deemed to be in the state of purchase of the instrument or service as shown by the books and records of the issuer or supplier of the instrument or service, until proved otherwise.

II. Adoption of the Purchase-Residence Presumption is Factually Sound and in Accord with Texas v. New Jersey.

In *Texas* v. *New Jersey, supra,* this Court held that the right to escheat intangible obligations of the types involved in that case should be accorded to the state of the creditor's last known address as shown by the debtor's books and records. The rationale of the Court's decision, in its own words, was "to distribute escheats among the States in the proportion of the commercial activities of their residents" 379 U.S. 674, 681. The Court then went on to hold that where there is no address on the books and records of the debtor, the state of corporate domicile of the debtor could escheat the property, and that it could also escheat the property if the state of the last known address did not have an applicable escheat statute. In both the latter situations, the escheating state would be allowed to keep the property until some other state came forward with proof that it had a superior right to escheat; i.e., proof that the last known address of the creditor was within its borders and that its law made provision for escheat of such property.

In *Texas* v. *New Jersey,* the likelihood that the debtor would not have the addresses of the creditors of such items as corporate dividend checks, employee paychecks and refunds of payroll deductions and checks payable to suppliers of goods and services (the type of intangible personal property involved in that case) was practically nil. Accordingly, this Court could anticipate that the effect of its decision would be that the state of last known address would have the superior right to escheat most of the property involved in that case and that the state of corporate domicile

would escheat only a very small proportion of such property in those relatively few instances where a last known address was not available or where the state of last known address did not have an applicable escheat law. Amexco is concerned that because a last known address for a significant proportion of Western Union money orders can be ascertained from that company's books and records (although with the expenditure of considerable time and money), this Court might apply the rule of *Texas* v. *New Jersey,* without the purchase-residence presumption, on the theory that the state of corporate domicile would only be empowered to escheat those Western Union money orders where no address was furnished by the sender. *Infra,* p. 16. But Amexco desires to emphasize to the Court that there are also many situations where the use of addresses is not a necessary concomitant to the relationship between the parties and accordingly addresses are not kept as a matter of business practice. These range from Western Union telegraphic money orders and Amexco's travelers checks, where a substantial percentage of senders do not supply their addresses, to Amexco's money orders, to bus tokens, to refunds on tickets and to many other types of cash purchases, where no addresses at all are available. The gist of our argument is that by adopting the rebuttable presumption which Amexco is advocating, the Court can follow the primary rule of last known address of *Texas* v. *New Jersey* with fairness and can accomplish the important result in another large category of cases of distributing escheats among the states in proportion to the commercial activities of their residents.

As this Court recognized in *Texas* v. *New Jersey,* the rule of last known address is itself a legal presumption that the residence of the owner of the abandoned property is in the state of last known address. If it is reasonable to

presume that the residence of the owner of the abandoned property of the kind involved in *Texas* v. *New Jersey* is in the state of last known address until proved otherwise, it is also reasonable to presume (as demonstrated below) that the residence of the owner of a telegraphic or commercial money order or travelers check is in the state where he purchased the instrument or service involved.

Since the issuers of travelers checks and money orders maintain computer records of the offices and agents to which their instruments are distributed and where they are sold, such issuers know the place of sale and therefore the state of sale of each of their travelers checks and money orders. Amexco submits that most people buy travelers checks and money orders locally, in the same area where they live and work.[5] In the case of travelers checks, they are usually sold by or through banks and since it can be proved that people tend to bank where they reside,[6] it fol-

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[5] Amexco requested the parties to stipulate certain facts as to the purchasers of its travelers checks and money orders and it was prepared to submit evidence that people tend to buy these instruments where they reside. This request was objected to by one of the parties and therefore the proof was not included in the stipulation.

[6] A number of recent Federal Reserve Bank surveys support the conclusion that people tend to bank where they reside. R. Bowers, "Businesses, Households, and Their Banks", (Federal Reserve Bank of Philadelphia 1969); G. Kaufman, "Customers View Bank Markets and Services: A Survey of Elkhart, Indiana", (Federal Reserve Bank of Chicago 1967); G. Kaufman, "Business Firms and Households View Commercial Banks: A Survey of Appleton, Wisconsin", (Federal Reserve Bank of Chicago 1967); L. Stiles, "Businesses View Banking Services: A Survey of Cedar Rapids, Iowa" (Federal Reserve Bank of Chicago 1967); R. Gelder, G. Budzieka, "Banking Market Determination—The Case of Central Nassau County" (Federal Reserve Bank of New York 1970). The common denominator of these surveys is the proposition that "the demand for the services of commercial banks tends to be highly localized." Bowers, *supra*. *See United States* v. *Phillipsburg National Bank & Trust Co., et al.*, 399 U.S. 356 (1970).

lows that the residence of purchasers of travelers checks will usually be in the state of purchase.

In the case of commercial money orders, Amexco submits that they are used for the most part to pay bills by persons who do not have checking accounts and therefore they are bought at outlets near the purchaser's home, or where he works or where he buys his groceries. Consequently, since the issuers of such instruments have records showing the place of purchase, the books and records of the issuer afford a means of determining the state of purchase of the individual travelers checks and money orders.

In the evidence submitted to the Special Master Western Union showed that out of 2,951 escheatable transactions surveyed for the year 1963, the address of the sender was given in 1,740 instances as the same state as the state in which the application originated; in 145 instances the address of the sender was given as being in a different state from where the application originated, and in the balance of 1,066 instances the sender's address was not given. In other words, of those instances where addresses were given, 93% resided in the state where the transaction originated. There is, therefore, a rational factual basis in the evidence submitted to the Court for the presumption that in the absence of proof to the contrary the state of residence of the purchaser of a Western Union money order is the same as the state where the service was sold.

Despite the fact that little proof has been offered and accepted in this proceeding as to who are the actual purchasers of Western Union money orders, Amexco submits that most personal services, from banking to groceries, are purchased locally, by residents of the particular state where the service is obtained and that from a pragmatic point of

view the burden of proving the contrary should be on the person asserting the contrary. Furthermore, any exceptions to the presumption, as noted by the Special Master in footnote 7 on page 11 and on page 18 of the *Report,* are practically dispelled as *de minimis* by the Special Master himself since the *Report* concedes that the office of purchase and the domicile of the purchaser "[F]requently, perhaps usually," coincide. In any event, the very purpose of a presumption is to economize factual investigation by presuming a fact to be true when there is a demonstrable basis for doing so. For example, in *Texas* v. *New Jersey,* this Court reasoned that since in a large number of abandoned dividend cases the corporate debtor's records reflected creditors' addresses, it could adopt the last known address test. The presumption that the residence of a dividend creditor accords with the last known address of such creditor appeared to the Court to be a reasonable one. Furthermore, the Court noted that exceptions to the presumption would undoubtedly cancel each other out:

> "And by using a standard of last known address, rather than technical legal concepts of residence and domicile, administration and application of escheat laws should be simplified. It may well be that some addresses left by vanished creditors will be in States other than those in which they lived at the time the obligation arose or at the time of the escheat. But such situations probably will be the exception, and any errors thus created, if indeed they could be called errors, probably will tend to a large extent to cancel each other out." 379 U.S. 674, 681.

Similarly, Amexco urges here that this Court should adopt the rebuttable presumption that the residence of the purchaser of a Western Union money order be deemed

to be in the state of purchase. This presumption is in full accord with the last known address concept of *Texas* v. *New Jersey* and would, in addition, carry out with the greatest possible fidelity the mandate of that case to distribute escheats equitably among the states. Furthermore, the presumption forms the basis for those statutes which have adopted Section 2(c) of the Revised Uniform Disposition of Unclaimed Property Act.[7] 9A U.L.A. (1967 Supp.). Section 2(c) provides the following test for escheat of commercial instruments:

> "(c) Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization or business association is directly liable, including, by way of illustration but not of limitation, certificates of deposit, drafts, money orders, and traveler's checks, . . ."

In the Commissioner's Note on the criteria for the presumption of abandonment of the various categories of property specified in Sections 2(a) through 2(d) of the Uniform Act the following statement appears:

> "In each instance the jurisdictional test for presumption of abandonment within the enacting state bears direct relationship to events taking place within that state, e.g., deposits 'made in this state,' funds 'paid in this state,' written instruments 'issued in this state,' property removed from safe deposit boxes 'in this

[7] *See* Revised Uniform Disposition of Unclaimed Property Act drafted by the National Conference of Commissioners on Uniform State Laws and approved by it and recommended for enactment in all the states at its annual conference meeting at Montreal, Canada, July 30–August 5, 1966; approved by the American Bar Association at its meeting in Montreal, Canada, August 9, 1966.

> state.' These qualifications are explicitly included both for the legal reason that there must be a jurisdictional basis for the claiming of the property within the state, and also for the practical reason that the presence of the events within the state means that the convenience of various parties in interest will be best served in this way.''

The parties referred to are the purchasers of the instruments or services involved and the state of purchase. Implicit in the choice of such jurisdictional tests is the assumption that most of the purchasers will be residents of the state in which the purchases are made.

Finally, the states of California, Indiana, North Carolina and Pennsylvania have made the purchase-residence presumption explicit in the abandoned property laws of those states.[8]

Amexco respectfully submits that the statutory presumptions referred to above carry out the purpose underlying the rule in *Texas* v. *New Jersey* and have a rational basis in fact. Failure to adopt the purchase-residence presumption would have the effect of invalidating the laws of the plaintiff Pennsylvania, North Carolina and intervening plaintiffs California and Indiana and casting serious doubt as to the validity of the several state laws which embody § 2(c) of the Uniform Act. This Court should not invalidate such a large body of state legislation without extremely good cause for doing so, and none has been shown in this case.

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[8] California C.C.P. § 1511 (West Supp. 1970); Burns Anno. Ind. St. § 51-704(d) (Supp. 1970); North Carolina G.S. Ch. 116A § 116A-4.1(a) (1971); Pennsylvania, Act 74 (1971 New Laws p. 371 (CCH 1971)).

III. The State of Purchase Rule is Fair to all the States, is Easy to Administer, and Accords With Modern Concepts of Escheat Jurisdiction.

The result in monetary terms of adopting the state of purchase rule is that escheats will be distributed in accordance with the commercial activities of presumed residents of the state in which the transaction originated. The state of purchase test also avoids the arbitrariness inherent in the adoption of the New York or corporate domicile rule which would, in effect, be the rule adopted for a substantial number of transactions if the *Report* is approved. That rule has no meaningful connection with the transaction involving the instrument presumed to be abandoned. In fact, the Court has recognized this important failing and has rejected the rule more than once because:

> "... in deciding a question which should be determined primarily on principles of fairness, it would too greatly exalt a minor factor to permit escheat of obligations incurred all over the country by the State in which the debtor happened to incorporate itself." *Texas* v. *New Jersey, supra,* 680.

Cf. Connecticut Mutual Life Insurance Co. v. *Moore, supra.* The corporate domicile rule must remain a secondary rule so long as there is a rational way of finding the residence of creditors. Thus, in order to achieve the greatest degree of fairness consistent with the complexities of this case, the Court should adopt the state of purchase rule advocated by Pennsylvania.[9]

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[9] Presumably, the state of corporate domicile of the debtor would still have secondary jurisdiction to escheat the property if there was no way of establishing from the books and records the state in which the transaction originated or if the state of purchase did not have an applicable escheat statute.

It should also be noted that the problem of windfalls to tourist states would be avoided by having the escheat jurisdiction allied as closely as possible to people's homes, not their vacation spots.

As to ease of administration, adoption of the state of purchase rule will result in the avoidance of wasteful litigation in the future and the monumental administrative burdens which will confront Amexco and other issuers in record keeping alone. As indicated above, Amexco has no way of knowing the addresses of the payees of its travelers checks and money orders and in the case of travelers checks it would be physically impossible to sort out the millions of application forms to find the names and addresses on those forms which represent checks still outstanding after the abandonment period had elapsed. And this assumes that the purchaser supplied an address in the first place. Adoption of the purchase-residence presumption would obviate the need for additional state record-keeping laws for escheat purposes which could be a severe burden on interstate commerce. *See In re Debs,* 158 U.S. 564 (1895). No other rule suggested in this case can achieve such ease of administration. In addition, the presumption would avoid the administrative morass likely to be encountered when dealing with such entities as Western Union which is the successor by consolidation or merger to 34 separate issuers of postal telegraphic money orders, each of which was incorporated in a different state. Stipulation, p. 3.

Finally, it should be noted that adoption of the state of purchase rule accords with the most modern and widely accepted concepts of escheat jurisdiction. Thirty-five states have adopted abandoned property laws which may be con-

strued to include travelers checks and money orders within their scope, *see* Appendix A, and of those, sixteen states expressly employ the jurisdictional test of place of issue or sale. *See* Appendix B. This is the rule which Amexco is urging here and which is the test employed in Section 2(c) of the Revised Uniform Disposition of Unclaimed Property Act. The same test was also adopted by New York with respect to money orders sold on and after January 1, 1958. As noted above, four states—including the principal plaintiff here—have codified the purchase-residence presumption in their escheat statutes.

Conclusion

The practical effect of adopting the *Report's* suggested decree will be to elevate the corporate domicile rule to primary status with respect to a substantial portion of Western Union money orders and, perhaps, all Amexco travelers checks and money orders. As pointed out above, the corporate domicile rule is purely arbitrary in terms of the actual residence of the owners of abandoned commercial instruments. Furthermore, the corporate domicile rule will be more difficult to administer and will be unfair to the vast majority of states.

The sounder course for this Court is to adopt the rebuttable presumption that the residence of a purchaser of a money order will be deemed to be in the state where the money order was purchased. This presumption is both factually sound and legally compatible with the principles of *Texas* v. *New Jersey*.

For the foregoing reasons, Amexco respectfully urges that this Court hold that the state of purchase be accorded

primary jurisdiction to escheat proceeds from commercial instruments for the transmission of money which have been deemed abandoned under the laws of the state of purchase of such instruments.

Respectfully submitted,

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January 27, 1972

APPENDIX A

Alabama—Act 63, Laws 1971, House Bill 68, First Special Session

Arizona—A.R.S. § 44-351-378 (1967)

California—C.C.P. § 1500 et seq. (West Supp. 1970)

Connecticut—C.6.5.A. §§ 3-56a et seq. (1969)

Delaware—House Bill 468, 1971 New Laws, p. 357

Florida—F.S.A. § 717.01–.30 (1969)

Idaho—I.C. §§ 14-501-532 (Supp. 1969)

Illinois—S.H.A. Ch. 141 §§ 101-146 (1964)

Indiana—Burns Anno. Ind. St. §§ 51-701-743 (Supp. 1970)

Iowa—I.C.A. §§ 556.1–.29 (Supp. 1970)

Kentucky—K.R.S. §§ 393.010-.990 (1970)

Louisiana—LSA-R.S. 9:151-156 (1965)

Maryland—Anno. Code of Md., Art. 95C, §§ 1-26 (Supp. 1969)

Massachusetts—Anno. Laws of Mass., ch. 200A, § 1-17 (1969)

Michigan—M.C.L.A. §§ 567.11-.76 (1967)

Minnesota—M.S.A. §§ 345.31-.60 (Supp. 1970)

Montana—R.C.M. §§ 67-2201-2230 (1970)

Nebraska—Laws of Nebraska, Vol. 2, Ch. 611 (1969)

New Hampshire—R.S.A. 471-A:1-28 (1968)

New Jersey—N.J.S.A. 2A:37-11—37-44 (Supp. 1970)

New Mexico—N.M.S.A. §§ 22-22-1—22-29 (Supp. 1969)

New York—N.Y. Abandoned Property Law, § 1309 (McKinney's Supp. 1970)

APPENDIX A

(cont.)

North Carolina—G.S. Ch. 116A (1971)

Oklahoma—60 Okl. St. Ann. §§ 651-687 (Supp. 1970)

Oregon—O.R.S. §§ 98.302-.436 (1969)

Pennsylvania—Act 74 (1971 New Laws pp. 368 et seq. (CCH 1971))

Rhode Island—G.L. § 33-21-11—21-40 (1969)

South Carolina—House Bill 1057, ratification no. 562, Laws 1971

Texas—Vernon's Ann. Civ. St. Art. 3272a (1968)

Utah—U.C.A. §§ 78-44-1—44-29 (Supp. 1969)

Vermont—7A V.S.A. §§ 27-1208—1236 (1967)

Virginia—Code of Virginia §§ 55-210.1-.210.29 (1969)

Washington—RCWA 63.28.070-63.28.920 (1966)

West Virginia—W. Va. Code §§ 36-8-1—36-8-31 (Supp. 1970)

Wisconsin—W.S.A. §§ 177.01-.30 (Supp. 1970)

APPENDIX B

Alabama—Act 63, Laws 1971

California—C.C.P. § 1513(c) (West Supp. 1970)

Indiana—Burns Anno. Ind. St. § 51-704(d) (Supp. 1970)

Iowa—I.C.A. § 556.2 3. (Supp. 1970)

Maryland—Anno. Code of Md., Art. 95C, § 2(c) (1969)

Minnesota—M.S.A. § 345.32(c) (Supp. 1970)

Montana—R.C.M. § 67-2202(c) (1970)

Nebraska—Laws of Nebraska, Vol. 2, Ch. 611, § 2(c) (1969)

New Mexico—N.M.S.A. § 22-22-3C (Supp. 1969)

North Carolina—G.S. § 116A-4.1

Oregon—O.R.S. § 98.306(3) (1969)

Pennsylvania—Act 74 § 3(2)(iii) (1971 New Laws p. 371 (CCH 1971))

Rhode Island—G.L. § 33-21-12(c) (1969)

South Carolina—House Bill 1057 § 14(B)(3), Laws 1971

West Virginia—W. Va. Code § 36-8-2(c) (Supp. 1970)

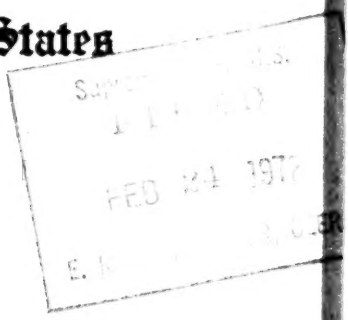
Wisconsin—W.S.A. § 177.02(3) (Supp. 1970)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 40 Original



COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

and

STATE OF CONNECTICUT,

Intervenor-Plaintiff,

vs.

STATE OF NEW YORK, ET AL,

Defendants.

BRIEF IN SUPPORT OF EXCEPTIONS OF DEFENDANT STATE OF FLORIDA TO REPORT OF SPECIAL MASTER

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EXCEPTIONS ARGUED

1. The Special Master has concluded that the issue in this case is controlled by constitutional considerations, contrary to the decision of this Court in Texas v. New Jersey that "the issue here is not controlled by. . . constitutional provisions or by past decisions . . . ." 379 U. S. 674, 683.

2. The Special Master has improperly concluded that a custodial taking by the state shown on the debtor's records as the place for payment or purchase would unlawfully impair the individual creditor's property rights, when such a taking protects those rights more fully than any of the alternative claims asserted in this case.

3. In concluding that the custodial claim to unclaimed money order funds by the state of original destination or payment is cut off by the sender's contract right to refund, the Special Master overlooks the fact that the only funds involved in this proceeding are those which cannot be refunded and which became and remained unclaimed from the time the obligation to the original payee accrued.

4. In concluding that the place designated on debtor's records for payment of money order funds does not constitute a creditor's address according to the debtor's books, within the rule of Texas v. New Jersey, supra, the Special Master has construed that decision to require a technically complete address supplied by the creditor to establish a factual foundation for a finding of legal residence, when the decision instead is based on a rule of equity and expedience and a presumption of residence which in the absence of contrary evidence is adequately supported by a debtor's record of the address at which payment is to be made to a creditor.

ARGUMENT

The defendant State of Florida respectfully submits that the Supreme Court should reject the recommended decree as set forth in the Report of the Special Master dated November, 1971, because it is based upon a misconception of constitutional law as applied to custodial escheat jurisdiction and upon a misapplication of the decision of this Court in Texas v. New Jersey, 379 U. S. 674 (1965).

The jurisdictional effect of such statutes as the Florida statute governing disposition of unclaimed property, Chapter 717, F.S., attached as an exhibit to this defendant's answer herein, has been expressly considered by this Court. The opinion in Security Savings Bank v. California, 263 U. S. 282, 44 S. Ct. 108, 68 L. Ed. 301, 31 A.L.R. 391, states that in the enforcement of a similar California statute "the state does not seek to enforce any claim against [the depositor]. It seeks to have the deposit transferred" to state custody. See also Anderson National Bank v. Luckett, 321 U. S. 233; Standard Oil Co. v. New Jersey, 341 U. S. 428.

The cases appear to be consistent in regarding escheat proceedings as in rem actions in which constitutional requirements are met by actual service of process on the debtor. Certainly in the case of custodial proceedings, such as those under the uniform act applied by many of the states involved in this case, the only jurisdiction exercised is that over the fund for payment of the debt. This would appear to be the reason for the clear pronounce-

ment of this Court in Texas v. New Jersey, supra, that "the issue here is not controlled by . . . constitutional provisions or by past decisions" as to jurisdiction over intangibles. 379 U. S. 674, 683.

The rule applied in the Texas case, to the extent that it recognizes secondary escheat rights by the state of debtor domicile, as well as the alternative which the court held to be more rational, necessarily rests on the assumption that jurisdiction in such proceedings is based on service on the debtor, whether that service is accomplished in the state of domicile or some other state. In distributing escheat rights among such states based on creditor contact, however, this Court in the Texas opinion expressly abandoned the "technical legal concept of residence and domicile." 379 U. S. p. 680.

This defendant believes that the Report of the Special Master departs from both the letter and the spirit of the ruling in the Texas case insofar as the report concludes that a debtor's books must show a specific and complete address supplied by the creditor. As a matter of fact, the various forms and exhibits contained in the stipulated record show that the absence of a specific address for either the sender or sendee in money order transactions results necessarily from the sender's failure to specify a residence or address in addition to the place at which the money order is purchased or payable. Identification of the place of payment and purchase on the debtor's records does, however, constitute a showing of a creditor's address in general terms.

Clearly the purpose of this Court in adopting in the Texas case a standard of "creditor's last known address as shown by the debtor's books," was not to facilitate notice to the creditor, nor was it based on any assumption that the debtor's records proved the creditor's residence or domicile. Instead the Court in that case, as well as the Master's Report in this case, recognizes that the place in which these transactions occur will coincide, at least proportionally, with actual creditor residence, which forms a fairer basis for escheat distribution than does corporate debtor domicile. As a matter of fact, if this Court should choose to consider the evidence rejected by the Master as to Western Union's analysis of 1963 transactions, this material will show that less than two percent of the money order purchase forms affirmatively show an address different from the state in which the transactions occurred.

The present controversy does involve a further refinement of the principle enunciated in the Texas case, because of the nature of the money order obligations here involved. The purchase of a money order, however, clearly creates an obligation due and owing to the payee or sendee. The nature of that obligation was considered by this Court in Western Union Telegraph Co. v. Pennsylvania, 368 U. S. 71, 82 S. Ct. 199, 7 L. Ed. 2d 139.

The money order conditions reflected by the exhibits in this cause, including the provision for cancellation and refund to the sender, are of course an essential and integral part of the contract required by the tariff

regulations filed by Western Union with federal regulatory authorities. These conditions fix the obligations of the parties. Western Union Tel. Co. v. Priester, 276 U. S. 252, 72 L. Ed. 555, 48 S. Ct. 243; Western Union Tel. Co. v. Esteve Bros. & Co., 256 U. S. 566, 65 L. Ed. 1094, 41 S. Ct. 584. In administering its laws, however, Florida does not seek to determine rights between the money order sender and sendee which would be governed by the contract provision. The state instead will continue to hold the property for the account of the person entitled to same, and merely seeks to enforce its custodial rights as to property which became unclaimed within this state.

CONCLUSION

For the reasons stated herein, as well as those more fully set forth in briefs previously filed in this proceeding, the Court is urged to reject the recommendation in the Report of the Special Master. In summary, the defendant State of Florida recognizes the desirability of disposing of this case by a rule that will be administratively feasible and have wide application, and contends that this result will be accomplished by adhering to the rule of the Texas case that the state entitled to escheat is that of the last known address of the creditor according to the debtor's records, and by concluding that the address specified by a debtor's records for payment to a creditor constitutes the creditor's last known address in the absence of conflicting proof. Recognition of escheat rights in the state of destination specified by such records as the place of payment to a money order sendee-payee accords with that rule. Although the application of the rule to bearer instruments (which do not name a payee or place of payment) is not directly presented upon the record in this case, the only debtor record of the creditor or payee's address in those instances would appear to be the place of issue. Escheat at that point would therefore be consistent with this defendant's position in this case.

Respectfully submitted,

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970
No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff

and

STATE OF CONNECTICUT,
Intervenor-Plaintiff,

vs.

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Defendants

PROOF OF SERVICE

I, Winifred L. Wentworth, Assistant Attorney General of the State of Florida, hereby certify that I am one of the attorneys for the defendant, State of Florida, that I am a member of the Bar of the Supreme Court of the United States, and that on the 23rd day of February, 1972, I served copies of the foregoing Brief in Support of Exceptions of Defendant State of Florida to Report of Special Master, on each of the parties by depositing such copies in a United States Post Office, addressed as follows:

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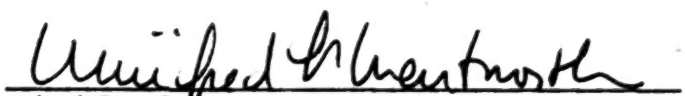
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 40 Original

Supreme Court, U.S.
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COMMONWEALTH OF PENNSYLVANIA,
Plaintiff,

and

STATES OF CONNECTICUT, CALIFORNIA and INDIANA,
Intervening Plaintiffs,

v.

STATES OF NEW YORK, FLORIDA, OREGON and VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,
Defendants,

and the

STATE OF ARIZONA,
Intervening Defendant.

BRIEF OF DEFENDANT NEW YORK IN SUPPORT OF REPORT OF SPECIAL MASTER

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BRIEF OF DEFENDANT NEW YORK IN SUPPORT OF REPORT OF SPECIAL MASTER

Preliminary Statement

The question before this Court is which States are entitled to take certain unclaimed monies paid to Western Union Telegraph Company ("Western Union") for the purchase of money orders on or before December 31, 1962

and still held by that company. The total is alleged to constitute approximately $1,500,000 (Complaint ¶ 4, 17; Report of the Special Master ("Report"), November, 1971, p. 2).

The underlying facts which gave rise to Western Union's possession of these funds are set forth at length in the Stipulation of Facts agreed to by all parties in this action, and summarized in the Master's Report (Report pp. 6-9). The agreed upon facts disclose that the funds in question are now held by Western Union on account of money orders purchased from the Company on or before December 31, 1962. The funds so held fall into 3 categories. In some cases, the funds represent negotiable drafts delivered in payment of, or as a refund for, money order purchases which were never presented and therefore never paid. In some cases, the funds represent money orders and refunds which were underpaid through error and where attempts to pay the balance were unsuccessful. In the remaining cases, apparently constituting the majority of those involved herein, the funds represent instances where payment (cash or draft) was not made to the sendee and Western Union did not issue a refund draft to the sender (Stipulation, p. 11, ¶ 21). Western Union's records of unclaimed money orders involve approximately 200,000 money order applications and about 300,000 ledger record entries. The Company's books and records do not designate any person as a "creditor" or as a "person to whom the money is owing". The ledger entries do not contain any reference to last known addresses of the sender or sendee. (Stipulation, ¶ 14, Exhibits 16-21)

The Special Master's Report

The Special Master recommended that this Court's formula, enunciated in *Texas* v. *New Jersey*, 379 U.S. 674 (1965), "for the escheat or custodial taking of intangible

claims such as ordinary debts should be applied to unpaid telegraphic money orders". (Report p. 2)

The Special Master found that the sender is the "creditor" when payment (by cash or draft) cannot be made to the sendee within the 72 hour limit (part of the terms of the contract) and the contract has therefore been cancelled, and that the sendee is the creditor when a draft has been issued to him but not cashed (Report p. 17). The Master then concluded (Report pp. 20-21):

> "Any sum now held by Western Union unclaimed for the period of time prescribed by the applicable State statutes may be escheated or taken into custody by the State in which the records of Western Union placed the address of the creditor, whether that creditor be the payee of an unpaid draft, the sender of a money order entitled to a refund, or an individual whose claim has been underpaid through error. Still following the formula of *Texas* v. *New Jersey,* if no address is contained in the records of Western Union, or if the State in which the address of the creditor falls has no applicable escheat law, then the right to escheat or take custody shall be in the domiciliary State of the debtor, in this case, New York."

The Special Master expressed "doubts" as to the constitutionality of the departures from *Texas* v. *New Jersey* advocated by the other parties. His recommendations, however, were not dependent upon such grounds, but upon the rationale expressed in the *Texas* decision. The Special Master asserted:

> "These doubts as to the constitutionality of the alternative formulas for escheat support the conclusion that the simple and workable formula established by the Court in *Texas* v. *New Jersey* should be followed with respect to telegraphic money orders which are here involved. As in the case of the obligations in

that case, this rule presents an easily administered standard preventing multiple claims and giving all parties a fixed rule on which they can rely."

New York's Position

The rule announced in *Texas* v. *New Jersey,* 379 U.S. 674 (1965) was intended to apply to all types of abandoned intangible obligations. The very essence of the holding was that each abandoned property case should not have to be decided on the basis of its particular facts. Each case should not require the Court to, "devise new rules of law to apply to ever-developing new categories of facts", 379 U.S. at 679. The special exceptions sought by the other states would undermine that purpose. Accordingly, New York respectfully urges this Court to adopt the Special Master's recommended decree based upon his conclusion that the rule of *Texas* v. *New Jersey* should be applied to the escheat or custodial taking of these abandoned money order funds.

The Positions of the Other Parties

The "Pennsylvania" Position

Pennsylvania takes exception to the Special Master's Report and asserts that the formula set forth in *Texas* v. *New Jersey* governing "ordinary debts" cannot be applied to telegraphic money orders (Pennsylvania, Exceptions p. 1).

Pennsylvania argues that Western Union "does not require the purchaser to fill in his address" on his application for a money order (Pennsylvania, Exceptions p. 1), "never makes records showing the address of the sender". (Pennsylvania, Exceptions p. 4), and therefore the rule that should be applied in the "money order transaction

where payment has not been effected nor refund made is that the State of origin" is entitled to escheat or take custody of the unclaimed amounts (Pennsylvania, Exceptions p. 2). Pennsylvania also proposes that if the State of origin cannot be determined from the records of the Company then the State of Western Union's domicile should take (Pennsylvania, Exceptions, pp. 2, 7-8).*

Pennsylvania, accordingly, explicitly states that the formula in *Texas* v. *New Jersey, supra,* should be confined to intangibles such as "ordinary debts" (Pennsylvania, Exceptions p. 1). It asserts that a different rule should be adopted where the transaction is of the type where the "obligor does not make entries upon its books and records showing the address of the obligee", in which event the only State entitled would be "the State of origin of the transaction" (Pennsylvania, Exceptions p. 8).

The following States have supported or adopted Pennsylvania's position (California, Brief and Motion p. 1; Connecticut, Exceptions pp. 1-2, Motion p. 4; Indiana, Exceptions pp. 4-5, Motion pp. 1-2; Oregon, Answer pp. 2-3, Brief p. 5; Virginia, Answer pp. 1-4; New Jersey, *Brief Amicus Curiae* p. 5; See Report p. 13 where the Special Master outlines the positions of these States).

The American Express Company ("Amexco") essentially supports Pennsylvania's position. Like Western Union it does so on the ground that it does not maintain records of the purchaser's address and that a requirement to do so would be an unnecessary burden upon it. (Amexco, Brief p. 21)

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* The Special Master understood Pennsylvania's position to have receded from the above so that it no longer claims amounts where drafts were issued and the records of Western Union show an address for the payee in a State which is different from the State of origin (Report, pp. 10-11).

The "Florida" Position

Florida takes exception to the Special Master's Report and maintains that the State of the sendee should be entitled to take or hold the funds in question (Florida, Exceptions p. 2). Arizona has taken the position that the State of destination should prevail and apparently recognizes the right of the State of the payee's last known address to take where this address is known (Arizona, Answer p. 6; See Report p. 13).

ARGUMENT

The rule established in *Texas* v. *New Jersey* was intended to apply to all types of abandoned intangible obligations. It was not intended to be subject to change in particular circumstances.

In 1965, with the stated intention of settling the issue "once and for all", this Court announced a "clear rule which will govern all types of [abandoned] intangible obligations . . . and to which all States may refer with confidence." *Texas* v. *New Jersey,* 379 U.S. 674, 678 (1965). In establishing this rule, the Court sought to avoid a test which would require each escheat case to be decided "on the basis of its particular facts" or require the Court to "devise new rules of law to apply to ever-developing new categories of facts". 379 U.S. at 679. The Court concluded that the rule it adopted "is the fairest, is easy to apply and in the long run will be the most generally acceptable to all the States". 379 U.S. at 683.

Barely five years after the decision in *Texas* v. *New Jersey,* and despite this Court's unequivocal statement that it was establishing a rule applicable to "all types of [abandoned] intangible obligations", in order to avoid the necessity of deciding each escheat case on its facts, Pennsylvania brought this action to graft an exception on the *Texas* rule.

New York maintains that *Texas* v. *New Jersey* disposed of the issues here presented and that a special exception in relation to money orders would undermine the primary purpose of the Court in that case—to provide an all-encompassing rule which could be relied upon by States and debtors alike, while safeguarding the interests of owners (creditors).

A. The Modification of the *Texas* v. *New Jersey* Rule Proposed by Pennsylvania

As noted above, Pennsylvania in its Exceptions clearly seeks the formulation of a distinct rule where "the company does not keep records of the last known address" in addition to the rule for "ordinary debts" (Pennsylvania Exceptions p. 1). Amexco explicitly seeks to establish a distinct rule for issuers of certain "commercial instruments" while at the same time asserting that telegraphic money orders embrace certain features "peculiar only to it" (Amexco, Brief *Amicus Curiae* p. 7).

The formulation of a new and different rule in addition to that for "ordinary debts" is predicated by these parties upon the conclusion that addresses of creditors are characteristically not available in the instant situations. However, while the parties herein have not disputed (as to the instant funds received by Western Union over a period in excess of 30 years, and still held by it) that it is "not feasible to determine the last known address of the creditor from the books of Western Union" (New York, Answer p. 4) there are an undetermined number of applications in which such information is available (Stipulation of Facts pp. 5-6; Amexco, *supra*, p. 9).

In a highly mobile society where trade even on the simplest levels is largely consummated through adjustments of individuals' various credit balances, i.e., through the exchange of "intangible" rights to property, a considerable incidence of failure to promptly exercise such

rights is a factor of some economic significance. This unclaimed property may not be recoverable by owners if adequate records are not maintained.*

In addition, unless adequate record keeping practices are utilized, it will not, as a practical matter, be possible for States to ascertain the amounts of funds actually left unclaimed and being used by holders who have no equitable interest in property inadvertently left with them. Indeed, to the extent records are incomplete or destroyed the way may be paved to write-off such amounts as profits.

In sum, the facts of this case present no basis for carving out the proposed Pennsylvania exception. The *Texas* rule is easily applied to the funds held by Western Union. Of equal importance, continued adherence to this rule will avoid setting a precedent suggesting to States the utility of proposing exceptions favorable to them whenever the facts of a particular case vary in any manner from those in *Texas* v. *New Jersey*.

B. The Exception to the Rule Proposed by Florida

Florida excepts to the Special Master's Report on the following grounds (Florida, Exceptions p. 2):

> "(4) In concluding that the place designated on debtor's records for payment of money order funds does not constitute a creditor's address according to the debtor's books, within the rule of *Texas* v. *New Jersey*, supra, the Special Master has construed that decision to require a technically complete address supplied by the creditor to establish a factual foundation for a finding of legal residence, when the decision

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* The interests of owners (creditors) in this situation are protected under the New York Abandoned Property Law since it is custodial only and no statute of limitations can be invoked by the State to preclude an owner's right to claim and receive previously unclaimed property.

> instead is based on a rule of equity and expedience and a presumption of residence which in the absence of contrary evidence is adequately supported by a debtor's record of the address at which payment is to be made to a creditor."

Florida, therefore argues first that the "creditor" is and remains the "sendee" until a draft is issued, and second that the place designated as the destination of the money order should be assumed to be the State of this creditor's address.

This argument is contrary to the stipulated facts in this case. If the paying office cannot locate the sendee, or after notice the sendee refuses a draft or does not appear to obtain one, or for any other reason the paying office cannot effect payment to the sendee, then after 72 hours (or other specified period) the money order is cancelled under the terms of the order by the paying office, requiring a refund to the sender (Stipulation at p. 8, ¶ 14 and Exhibits 11-14). Therefore, by the terms of the money order and in actual practice Western Union "cancels" unpaid or undelivered money orders. Following cancellation, the "creditor" is the sender, and not the sendee as Florida contends.

Florida's further contention that the State of destination of the money order should be presumed to be the last known address of the creditor (as defined by Florida) faces the same difficulties with which the converse presumption advocated by Pennsylvania is confronted.* This second aspect of Florida's argument therefore involves, as does

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* Where no draft is issued to the sendee, Florida's claim as the State of destination is particularly tenuous. It is well known that Florida is a "vacation" State. At the very least, a substantial number of Florida "sendees" are residents of other States merely travelling in Florida. Accordingly, when a money order destined for Florida is cancelled, Florida in most cases will have no relationship with the sendee other than his temporary presence.

Pennsylvania's principal argument, the carving out of an exception from the rule laid down in *Texas* based on the contention that in *Texas* the debtor had records from which creditors' addresses could be ascertained. It is argued by Pennsylvania and Amexco that this determinative factor is not present in the instant situation.*

This contention that *Texas* depended upon the existence of last known addresses, is groundless. Both the opinion in *Texas* v. *New Jersey* and the Master's Report (Report pp. 8-12) on which it was based are devoid of any statement as to how many creditors' last known addresses were shown by the debtor's books and records, much less contain any statement that as to "most" of the debts the creditors' last known addresses were shown. It was therefore quite impossible for the Court to have grounded its decision on the "fact of maintenance of such records".

What is clear is that the Court was fully aware that with respect to portions of four of the eight categories of "debts" involved in *Texas* there were creditors "some of whom had no last known address indicated", 379 U.S. at 675-76, fn. 4. With this fact in mind, the Court laid down

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* Amexco argues also that the place of purchase should be presumed to be the place of the creditor's address. In support of this presumption, it discusses a 1963 survey (Amexco, *supra* p. 16) which was objected to when offered into evidence (Transcript, p. 9) as hearsay and incompetent, and not admitted into evidence by the Special Master (Report pp. 5-6) as immaterial. It may be noted that "1963" is not a year included in the instant litigation and that the period in question, ending with December, 1962, included the War years with its extraordinary mobility among members of the armed services and others who presumably made frequent use of telegraphic money order services. In addition, Amexco cites various publications (Brief *Amicus Curiae,* p. 15) pertaining to "banking" matters. Without considering the specifics of these factual assertions, which are not in evidence, it appears tenuous at best to presume that banking practices can be assimilated to telegraphic money orders or with traveler's checks. Further, no documentation is necessary to establish that mobility has become a way of life in the United States and this fact has given rise to many problems in adjusting to a federal system.

a rule applicable to "all" abandoned intangible obligations, making specific provision for those obligations where the creditor's last address was unknown. Moreover, when this Court decided *Texas* v. *New Jersey,* in 1965 it had already confronted these factual issues in *Western Union Telegraph Co.* v. *Pennsylvania,* 368 U.S. 71 in 1961, and therefore was aware of the instant facts when it formulated the unqualified *Texas* rule for intangibles of all kinds.

In this regard, it should be noted that *Texas* v. *New Jersey* involved a wide variety of intangibles such as uncashed checks for wages, reimbursements, goods and services, shareholder dividends and minor obligations; unclaimed mineral proceeds and payroll deductions; and undelivered fractional stock certificates. In short, *Texas* v. *New Jersey* concerned the types of intangible business obligations common, in one facet or another, to a multitude of business operations.

In reality, Pennsylvania's and Florida's contentions are nothing more than that in this case there are larger percentages of unknown last addresses than there were in *Texas* and that this fact justifies an exception to the rule. This is precisely what this Court said was to be avoided, that is, a decision in each case based on its "particular facts" or the creation of "new rules of law to apply to ever-developing new categories of facts". Moreover, if different rules were to be formulated depending on which debtors kept records of last known addresses and which did not, endless litigation would ensue to determine in each case the proper category for each holder of unclaimed property—depending upon whether its records essentially contained this information.

In the long run, in the very limited instances where records of creditor's addresses are not available escheats "will tend [to be] distribute[d] . . . among the States in the proportion of the commercial activities of their residents". Errors in distribution, "if indeed they could be

errors, probably will tend to a large extent to cancel each other out". 379 U.S. at 681.

Moreover, it is within the power of Pennsylvania and other States to correct this situation with little cost to Western Union. The Company's "money order application form" has a blank space for the "sender's address". (See Exhibit 2 to Stipulation). States can require Western Union to maintain adequate records of the addresses of senders. The only change necessary in Western Union's record keeping would be the addition in their "ledgers" of a column showing "sender's address". (See Stipulation at p. 14, ¶ 26). On the other hand, Pennsylvania's position herein may in effect discourage maintenance of such records.

C. The Excepting Parties In Effect Advocate A Return to the "Contacts" Criterion Which This Court Has Repudiated.

The effect of the positions of the excepting parties and Amexco in advocating a criterion for escheat or custodial holding based upon the place of the original "transaction" or place of "purchase" is to apply a form of "contacts" criterion.

In the instant case Pennsylvania asserts the predominant right of the state where the transaction or purchase was initially effected. In another fact situation, however, a different "contact" may be urged, or issue may be drawn as to the state where in fact the "transaction" or "purchase" occurred. Contemporary business practices continuously involve interstate transactions and purchases. To retread the long road to such a "contacts" theory is to invite endless litigation.

Texas v. *New Jersey* is unequivocal in this respect:

> "The 'contacts' test as applied in this field is not really any workable test at all—it is simply a phrase

> suggesting that this Court should examine the circumstances surrounding each particular item of escheatable property on its own peculiar facts and then try to make a difficult, often quite subjective, decision as to which State's claim to those pennies or dollars seems stronger than another's * * *. The uncertainty of any test which would require us in effect to either decide each escheat case on the basis of its particular facts or to devise new rules of law to apply to ever-developing new categories of facts, might in the end create so much uncertainty and threaten so much expensive litigation that the states might find that they would lose more in litigation expenses than they might gain in escheats." 379 U.S. at p. 679

As a logical consequence, the Court has refused to adopt any rule which would result in its treating this subject on a case-by-case basis:

> "Moreover, application of the rule Pennsylvania suggests would raise in every case the sometimes difficult question of where a company's 'main office' or 'principal place of business' or whatever it might be designated is located. Similar uncertainties would result if we were to attempt in each case to determine the State in which the debt was created and allow it to escheat. Any rule leaving so much for decision on a case-by-case basis should not be adopted unless none is available which is more certain and yet still fair". 379 U.S. at 680

In establishing the rule in *Texas* v. *New Jersey,* this Court was fully aware that the "case could have been resolved otherwise". The Court recognized that it was "fundamentally a question of ease of administration and of equity", and concluded that the rule it adopted "is the fairest, is easy to apply and in the long run will be the most generally acceptable to all the States." 379 U.S. at 683

The concern for ease of administration and equity dictated, in the Court's view, that the question of which State should take abandoned intangible obligations be

> "settled once and for all by a clear rule which will govern all types of intangible obligations . . . and to which all States may refer with confidence."* 379 U.S. at 678

Moreover, in repudiating any "contacts" criterion in *Texas* this Court acted upon the basis of preceding decisions which had initiated a direction away from a place of "transaction" theory to one premised upon the location of either the creditor or debtor. While in *Connecticut Mutual Life Insurance Co. et al.* v. *Moore,* 333 U.S. 541 (1947) the Court did not deal with potential opposing claims by different states it premised its decision on the location of the "owner". On the other hand, the *Standard Oil Co.* v. *New Jersey,* 341 U.S. 428 (1951) decision was based on the domicile of the "debtor". Accordingly, these decisions logically implied an ultimate rule which takes account of the continuing relation of either the creditor or debtor or both with a particular state, as opposed to a rule based upon the vagaries and transitory character of the place of "transaction".

Further, this Court in *Texas* in arriving at the conclusion that it had settled the matter "once and for all" observed, "In some respects the claim of Pennsylvania, where Sun's principal offices are located, is more persuasive, since this State is probably foremost in giving the benefits of its

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* At another point, the Court stated: "in other words in both situations the State of corporate domicile should be allowed to cut off the claims of private persons only, retaining the property for itself only until some other State comes forward with proof that it has a superior right to escheat. Such a solution for these problems, likely to arise with comparative infrequency, seems to us conducive to needed certainty and we therefore adopt it." 379 U.S. at 682

economy and laws to the company whose business activities made the intangible property come into existence". 379 U.S. at p. 680 In this context, it should be noted that New York is not only the State of corporate domicile but is the situs of the principal place of business of Western Union, the place where its executive offices are located, where its books of accounts are maintained, where the meetings of the Board of Directors take place and where its management and fiscal policies are determined. (Stipulation, p. 1, ¶ 1). Moreover, as noted by this Court in *Western Union* v. *Pennsylvania,* 368 U.S. 71, 78 (1961), the New York Statute, Abandoned Property Law, § 1309, is a custodial and not an escheat statute, "leaving the way clear for all claimants to bring action to recover them at any time * * *." New York has no statute of limitations on claims by rightful owners to abandoned funds or property held by its State Comptroller. Abandoned Property Law § 1404; *Matter of New York University* (State Comptroller), 271 App. Div. 131, 63 N.Y.S. 2d 556, aff'd 296 N.Y. 913, 73 N.E. 2d 36 (1947).

State legislation governing unclaimed property has not evolved in any uniform manner. In adopting the *Texas* rule with respect to unclaimed property and conflicting state claims, this Court did not create the necessity for more State legislation than would have been required by other rules. Such conforming legislation is not a problematical matter once a definite rule is established.

In summary, the eroding exceptions proposed to the rule adopted by this Court "with a unique tone of finalty"* in *Texas* v. *New Jersey,* should be rejected. Any other determination would be tantamount to a reversion to the "contacts" test which was rejected by this Court in *Texas* v. *New Jersey.*

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* Sentell, "Escheat Unclaimed Property, and the Supreme Court", 17 Western Reserve Law Review 50, 78 (1965).

Conclusion

The rules announced in *Texas* v. *New Jersey*, are applicable to the abandoned funds held by Western Union in this case. Each of the proposed exceptions to the rule should be rejected. The abandoned money order funds held by Western Union should be disposed of as recommended in the Special Master's Report, pursuant to the rules adopted by this Court in *Texas* v. *New Jersey*. Such funds, when paid to New York, will be held for the benefit of the persons entitled thereto without limitation of time.

Dated: New York, New York, February 24, 1972.

Respectfully submitted,

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REPLY OF THE STATE OF OREGON

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REPLY

POSITION OF THE STATE OF OREGON

The State of Oregon agrees with the contentions made by plaintiffs in this matter, and urges the Court to adopt the rule proposed by the Commonwealth of Pennsylvania.

DISCUSSION

The inequities which would result if this Court were to adopt the recommendations of the Special Master have

been clearly stated in the exceptions filed by the plaintiffs and in the Brief Amicus Curiae of the American Express Company. Thus, for purposes of this reply, it is unnecessary to repeat what has already been said. There is, however, one point which merits brief discussion.

In his analysis of the law and facts in this case, the Special Master found no justification for departing from the rules established by this Court in *Texas v. New Jersey,* 379 U. S. 674 (1965). It is clear from his report that in recommending the application of the rules of that case to unclaimed money orders, he was strongly influenced by the effect a departure therefrom might have on the property rights of those individuals who are entitled to such unclaimed funds. In discussing the rule proposed by the Commonwealth of Pennsylvania, the Special Master stated:

> "The principal difficulty with this solution is that it gives rise to a serious question as to the legality of cutting off or impairing an individual's property rights by an *in rem* proceeding in the state of origin."

Apparently, it was with the foregoing in mind that he recommended the application of the rules set forth in *Texas v. New Jersey.* He reasons that property rights would not thereby be cut off or adversely affected by state action in an *in rem* proceeding "in a forum having no continuing relationship to any of the parties to the proceedings."

Oregon believes that the application of such reason-

ing to the present facts does not produce a fair and equitable result. The justification for permitting the State of New York to escheat unclaimed money orders where there is no known address for either the purchaser or the intended recipient, must necessarily be based solely on the fact that New York has a continuing relationship to Western Union in that Western Union is organized under the laws of that state. However, this factor has virtually no effect on the property rights of the persons entitled to claim such funds. Under the facts of this case, the property rights of an individual who lives in Oregon, for instance, would not be any more protected by an *in rem* proceeding in the State of New York than by a proceeding in any other state simply because Western Union is domiciled in New York. Under the present facts, this is especially so because in most instances neither the purchaser or the intended recipient of a money order have any contact with the State of New York. In the absence of any last known address, the *only* state known with certainty to have some relationship to the claimant would be the state of purchase.

In *Texas v. New Jersey, supra,* the Court considered corporate domicile to be but a minor factor in its decision. 379 U. S. at 680. Under the facts of this case, the question of corporate domicile is likewise a minor factor. With respect to the protection of the property rights under consideration, the relationship between New York and Western Union is insignificant, and thus, the Special Master placed unwarranted importance thereon.

There is no inconsistency in contending that the rules established in *Texas v. New Jersey* should not be applied to the present set of facts, while at the same time we rely on the rationale of the case as support for our position. The philosophy of the Court is set forth on page 683 at follows:

> "We realize that this case could have been resolved otherwise, for the issue here is not controlled by statutory or constitutional provisions or by past decisions, nor is it entirely one of logic. It is fundamentally a question of ease of administration and of equity. We believe that the rule we adopt is the fairest, is easy to apply, and in the long run will be the most generally acceptable to all the states." 379 U. S. 674.

The Court declared its intent to distribute escheats among the states fairly and in proportion to the commercial activities of their residents. Since the rule proposed by Pennsylvania would furnish the most fair and equitable method for the distribution of unpaid money orders, its adoption in this case would be in harmony with the foregoing rationale, while mechanical application of the rule followed in *Texas v. New Jersey* would lead to a result inconsistent with its rationale.

CONCLUSION

Oregon urges the Court to adopt the rule proposed by the Commonwealth of Pennsylvania because, in terms of equity and fairness among the states, it will produce the better result.

Respectfully submitted,

LEE JOHNSON
Attorney General

JOHN W. OSBURN
Solicitor General

PHILIP J. ENGELGAU
Assistant Attorney General

MOTION FILED

MAR 22 1972

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1970
No. 40 Original

Commonwealth of Pennsylvania, et al.
Plaintiffs

-vs-

State of New York, et al.,
Defendants

MOTION OF THEODORE L. SENDAK, ATTORNEY GENERAL OF INDIANA, FOR ADMISSION OF ROBERT A. ZABAN TO THE BAR OF THIS COURT PRO HAC VICE FOR PURPOSES OF ORAL ARGUMENT

THEODORE L. SENDAK
Attorney General of Indiana

Attorney for the Intervening
Plaintiff State of Indiana

Of Counsel:
ROBERT A. ZABAN
Deputy Attorney General
219 State House
Indianapolis, Indiana 46204
(317) 633-5512

The undersigned petitioner respectfully moves this Court for admission of Robert A. Zaban, Deputy Attorney General of Indiana, to its bar pro hac vice for purposes of oral argument in this cause. As reason for this motion the undersigned respectfully shows the Court:

1. Robert A. Zaban is a member of the bar of the State of Indiana in good standing and has been a member of the bar of the State of Indiana in good standing since May, 1969.

2. Robert A. Zaban is of counsel for the State of Indiana, a party in this cause,

and it is in the best interests of such party to be represented at oral argument in this cause.

3. Robert A. Zaban is a duly appointed and commissioned Deputy Attorney General of the State of Indiana and, as such, is authorized to exercise the powers and authority delegated by law to such office and to perform the duties assigned to him pursuant to law.

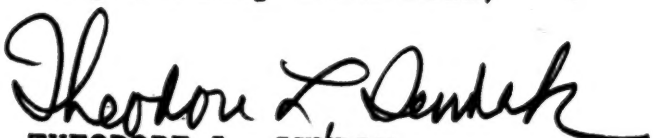
4. Robert A. Zaban has held such position since July 1, 1969.

5. The undersigned petitioner is a

member of the bar of this Court.

WHEREFORE, the undersigned petitioner prays that the Court admit the aforesaid Robert A. Zaban to its bar pro hac vice for purposes of oral argument in this cause.

Respectfully submitted,



THEODORE L. SENDAK
Attorney General of Indiana

Attorney for the Intervening
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In the Supreme Court of the United States

SUPREME COURT, U.S.
FILED
MAR 24 1972
MICHAEL RODAK, JR., CLERK

October Term, 1970
No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff

and

STATES OF CONNECTICUT, CALIFORNIA and INDIANA,
Intervening Plaintiffs

v.

STATES OF NEW YORK, FLORIDA, OREGON and VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,
Defendants

and the

STATE OF ARIZONA,
Intervening Defendant

REPLY BRIEF OF COMMONWEALTH OF PENNSYLVANIA TO BRIEF OF DEFENDANT NEW YORK IN SUPPORT OF REPORT OF SPECIAL MASTER

J. SHANE CREAMER
Attorney General of Pennsylvania
DANTE MATTIONI
Deputy Attorney General for Eastern Pennsylvania
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REPLY BRIEF OF COMMONWEALTH OF PENNSYLVANIA TO BRIEF OF DEFENDANT NEW YORK IN SUPPORT OF REPORT OF SPECIAL MASTER

I. THE CORPORATE DOMICILE RULE, AND NOT PENNSYLVANIA'S POSITION, REPRESENTS DEFICIENCIES OF THE "REPUDIATED" CONTACTS CRITERION

New York states that the rule advocated by Pennsylvania (and supported by all of the other States which are party to this action—excepting Florida and Arizona) is a revival of the "repudiated" contacts criterion raised by Texas in *Texas v. New Jersey,* 379 U.S. 674 (1965). To the contrary, all rules ever proposed for resolving conflicting State claims over escheats[1] have been based on some State "contact"—be it with the creditor, debtor or debt—with the fund sought to be escheated; but it is the corporate domicile rule proposed by New York, and accepted by the Special Master, which carries the contacts criterion to its logical extreme by rejecting the commercial realities of the underlying transactions.

Texas had argued, with respect to some of the obligations unclaimed from the Sun Oil Co., that the

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[1] For convenience, "escheat" as used in this brief will refer as well to custodial taking or custodially take, depending on whether that word is used as a noun or as a verb.

State of the creditor's last known address should be allowed to escheat, but with respect to others, had maintained that either location of the debtor's records or the situs of real property from which the debt was created should control. Not only did Texas' proposal threaten recurrent litigation over each new category of escheats (because of the room left for factual disputes) but it diffused superiority of a claim as between States to those having the most significant contact with the creditor, debtor, or debt in different situations. The Court wished to, and did, focus in on the factual reality that a debt is an asset of a creditor, and so adopted the rule then proposed by Florida. As between the different formulae proposed for assigning priority, the Court clearly rejected those based on a State-debtor nexus—argued then by both New Jersey and Pennsylvania, and now championed by New York—as the least workable, both in terms of equity and commercial reality, concepts which the Court found should control such controversies between the States.

The limitations of a rule for assigning inter-State priority which focuses on the debtor's, and not the creditors, contact with the escheating State, is graphically illustrated by the instant factual context. Should the corporate domicile exception of *Texas v. New Jersey* be extended as requested, unrefunded monies belonging to citizens located in the forty-eight States served by Western Union would flow into the treasury of the State of New York.

II. TEXAS V. NEW JERSEY DOES NOT PRECLUDE THE COURT FROM A REVIEW OF INTANGIBLE OBLIGATIONS WHERE THE DEBTOR DOES NOT CUSTOMARILY RETAIN THE ADDRESS OF HIS CREDITOR

The Court was quite careful to confine its holding in *Texas v. New Jersey* to the factual setting of the debtor instruments there involved. So at 379 U.S. 674, 678, the Court expressed a desire to formulate a rule which would govern "all types of intangible obligations *like these*" (emphasis supplied), and at pages 681-682 the Court formulated its holding with reference to ". . . each item of property in question *in this case.*" Such precise limitation to the intended scope of the holding cannot be said to have been accidental.

The Court and the parties must have been well aware that the assorted monetary obligations of an oil producing, refining and distributing corporation could not be said to encompass all of the commercial obligations which in the course of interstate commerce go unclaimed by their holders and so give rise to conflicting State demands for escheat. To say that the Court promulgated an all-encompassing rule which was intended to govern with finality the escheat, as between the States, of all intangible property, is to attribute a prescience which even to this honorable body, is quite inconsistent with our legal history. The very variety of our modes and instruments of commerce is tribute to the opposing genius of the common law which allows for the precise, yet flexible, fitting of rules to meet the realities of situations as they arise.

That the Court was influenced by the specific setting of a producing and distributing type of enterprise is quite evident from the manner in which the corporate domicile exception was grafted onto the creditor State rule, the main holding of *Texas v. New Jersey*. The great body of the opinion was devoted to a discussion of the underlying realities and equities which required application of the creditor State rule as opposed to the others proposed. Those realities and equities have been restated by Pennsylvania many times in the course of this litigation—that the unclaimed debt is an asset of the creditor, not the debtor; equitable distribution among the States of escheats in proportion to the commercial activities of their citizens; simplified application and administration of escheat laws; and a rule which ". . . in the long run will be most generally acceptable to all the States." 379 U.S. 674, 683. When it came time to state the corporate domicile exception, applicable to situations where the corporation retained no record of its creditor's address or where the creditor's State had no law which allowed for escheat, the Court made no suggestion that the same was dictated by the above considerations.

Indeed, the corporate domicile rule, proposed then by New Jersey for all of the transactions, had been rejected because "it would too greatly exalt a minor factor to permit escheat of obligations incurred all over the country by the State in which the debtor happened to incorporate itself." 379 U.S. 674, 680. It was then accepted in the two situations stated above; first, because within the case's factual context those situations were presumed ". . . *likely to arise*

with comparative infrequency" (emphasis supplied), and only second because it was conducive to "needed certainty." *Ibid.*, p. 682.

It is evident therefore that the Court did not preclude itself for all time, as argued by New York, from a review of intangible obligations such as Western Union money orders (and other forms of bearer notes and certificates) where by custom and commercial practice (as conceded by New York with respect to Western Union in paragraph 14 of its answer and at page 7 of its brief) it is not feasible to determine the creditor's last known street address from the debtor's books and records. This is the converse of the factual situation which allowed for the corporate domicile exception to be initially applied.

III. THE WESTERN UNION TRANSACTION FALLS WITHIN A LIMITED CATEGORY OF COMMERCIAL SERVICES AND BEARER INSTRUMENTS WHICH ARE DISTINCT FROM THOSE CONSIDERED IN TEXAS V. NEW JERSEY

New York repeatedly urges in its brief that application of anything more than the black letter law of *Texas v. New Jersey,* even interpretation of that law by the Court, will open a Pandora's box of litigation between the States with respect to conflicting claims of escheat. New York further infers at page 11 of its brief that the wide range of unsatisfied claims on the Sun Oil Company in *Texas v. New Jersey* so covered

the gamut of intangible business obligations, that there really is not much further to consider. Then, at the bottom of page 11, New York states that "in the very limited instances where records of creditors' addresses are not available . . ." escheats will distribute themselves among the States in proportion to the commercial activities of their citizens and errors in distribution will cancel themselves out, citing *Texas v. New Jersey* in a manner which is totally inapposite to the present factual context.

In fact there are two distinct categories of transactions from which intangible obligations, susceptible among the States to escheat, arise:

1. Obligations incurred by an enterprise during the course of its business for services provided by employees, suppliers, investors, money-lending creditors, depositors, etc., and

2. Obligations incurred by an enterprise whose business, or a facet of whose business, is to incur such obligations as a service to the public.

The first category is typified by a continuing relationship between the debtor enterprise and its creditors or classes of creditors because of the necessity to the enterprise of the services which the latter provides in exchange for creation of the debt. Because of this continuing relationship, and the relatively limited number of creditors, each creditor's street address is usually maintained by the debtor enterprise on its books and records as a matter of commercial practice. The second category is typified by a transient relationship between the debtor enterprise and

its creditors, in that the debt is, at first instance, a service which the enterprise contracts to perform in the future, and which is offered to the public at large as part of its business. It is only when, for some reason, the contracted-for service fails to be performed that the consideration paid (in the absence of an agreement to the contrary) becomes refundable, and that a claim is created in the creditor which is subject to prospective escheat. Since the service is offered to the public at large, and both debtor and creditor reasonably expect that it will be performed, as a matter of commercial practice each creditor's street address is usually not maintained on its books and records by the debtor enterprise. In the first category, the enterprise becomes indebted for services received; in the second, the debt arises from the enterprise's failure to complete services which were previously purchased by its creditor.

The first category covers the range of transactions considered in *Texas v. New Jersey* and would likewise comprehend any unclaimed obligations that Western Union might owe to its employees, shareholders, and suppliers, etc. The second category arises from the very nature of the money order business in which Western Union charges for its service in first incurring and then transmitting the obligation. (It likewise comprehends the business of other companies whose service is to incur redeemable obligations, whether in the form of travelers' cheques, gift certificates, tickets, tokens or the other types of bearer instruments which have been mentioned in prior briefs submitted by Pennsylvania and some of the other parties.) A factor which is common to most transactions in this

second category is the absence of commercial practice, or any pragmatic reason therefor, of recording the street address of the obligee.

With particular respect to Western Union, though its ledgers indicate the city and State of purchase for each money order, and its applications provide space for the purchaser's insertion of his or her street address and that of the prospective recipient, "in many cases" the customer will forego insertion of his or her address, and in still others will not insert the address of the intended recipient (*Stipulation*, §7). (This logically flows from the fair assumption that the purchaser does not contemplate that the transaction will not be completed so as to necessitate a refund.) With respect to "over the counter" money orders sold by Western Union, American Express, and other like companies, neither identity nor street address of the purchaser is retained, but again the records show the location and State of each sale (*Stipulation*, footnote 10).

It cannot fairly be said, as argued by New York, that this second category of intangible instruments which are subject to escheat—where the street address of creditors is rarely maintained on either the books or records of the enterprise—is "limited", or that given application of the corporate domicile rule, errors in distribution will tend to cancel themselves out. The transparency of this argument is apparent if only from the absence of one State, other than New York, which supports extension of the corporate domicile exception to the rule of *Texas v. New Jersey* to the facts of this case.

At page 14 of its brief, New York argues that the corporate domicile rule recognizes the continuing relationship between the debtors and one particular State. What New York ignores is that to at least 80 percent of the Western Union money order transactions it has no relationship whatsoever (*Stipulation*, Exhibit 24). As to the others, New York would escheat under the rule proposed by Pennsylvania. While there are no demonstrable elements in this second category of transactions which require a rule giving preference for purposes of escheat to the State of corporate domicile, the same equitable and pragmatic rationale which underlay the primary holding of *Texas v. New Jersey*, supports a rule in the instant case which again gives preference to the creditor State.

IV. ADOPTION OF THE CORPORATE DOMICILE, AND NOT THE CREDITOR STATE, RULE WILL PROMOTE LEGAL UNCERTAINTY AND ADMINISTRATIVE EXPENSE

It is the corporate domicile rule and not the rules supported by the other States to this litigation—each of which focuses on the creditor's State—which will promote legal uncertainty and administrative expense. New York to the contrary, the monies involved in the instant case and its prospective ramifications are substantial, and the remaining thirty-four States which have laws relating to escheat will not sit idly by and watch unclaimed sums from transactions which originated in their States drain to one State for

failure of adequate records. The possibilities for legislation and related lawsuits are obvious, and the resulting commercial expense and even dislocation is equally so. Western Union has estimated the cost of a survey of what applications it retains from its prior history to be from $100,000.00 to $175,000.00, for purposes of determining last known street addresses (*Stipulation,* §32, Exhibit 21). This expense can be magnified many times when considering the probability of legislatively required retention, processing and reporting of such records by the industry (and the cost of resulting litigation should the industry resist the imposition of such requirements) should the creditor State rule of *Texas v. New Jersey* be narrowly construed and the corporate domicile exception extended as requested by New York. As stated by Western Union at pages 13 and 14 of its brief to the Special Master, these records are not required in the operation of the money order business.

> "Since it is reasonable to assume that the vast majority of such money orders are paid and never fall into the category of abandoned property, maintaining adequate, permanent records of names and addresses of purchasers in all such transactions, for the sake of documenting in such additional respects the tiny proportion which might some day become escheatable, would certainly be costly and unpalatable, and arguably unreasonable. Moreover the costs of so doing must ultimately be borne by patrons of the service, so that such requirement might also not be in the public interest."

CONCLUSION

Each of the proposed rules in this case, as in *Texas v. New Jersey,* presupposes some sort of State "contact" with either the creditor or debtor to the instruments sought to be escheated. The corporate domicile rule, however, embodies the deficiencies of the contacts criterion, as proposed by Texas in *Texas v. New Jersey,* in their logical extreme. This is because it focuses entirely on the debtor and not the creditor to the underlying transaction. The corporate domicile rule was grafted onto the main holding of that case within a context of the creditor's last known street address being ordinarily evident on the books and records of the debtor in the types of transactions there involved. That is not so within the present factual context, which encompasses a wholly distinct and definable category of transactions where the debtor's enterprise is to obligate itself to perform services on a transient basis to the public at large, and where knowledge of the creditor's street address is neither required by the business nor ordinarily recorded on its books and records. Because the corporate domicile exception, in this context, is so out of touch with commercial reality and considerations of fairness to the great majority of States, its adoption will only promote legal uncertainty and administrative expense.

Dated: Philadelphia, Pennsylvania, March 22, 1972.

Respectfully submitted,

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Supreme Court, U. S.
FILED
JUL 14 1972
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

October Term, 1969
No. 40 Original

COMMONWEALTH OF PENNSYLVANIA et al.,
Petitioner

v.

STATE OF NEW YORK et al.

PETITION FOR REHEARING

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IN THE SUPREME COURT OF THE UNITED STATES

No. 40 Original

Pennsylvania

v.

New York

On Bill of Complaint

PETITION FOR REHEARING

The petitioner herein respectfully moves this Court for an order (1) vacating its order of June 19, 1972, which adopts the decree recommended by the Special Master and (2) listing this matter for rehearing or, in the alternative, remanding to the Special Master for the submission of further evidence concerning the items raised in the Court's majority opinion and this petition herein. As grounds for this motion, petitioner states the following:

1. The Special Master Had Available to Him Evidence Regarding the Percentage of Unknown Addresses in Money Order Transactions

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At page 8 of the slip opinion the Majority states as follows:

> "Thus, the only arguable basis for distinguishing money orders is that they involve a higher percentage of unknown addresses. But we are not told what percentage is high enough to justify an exception to the *Texas* rule, nor is it entirely clear that money orders constitute the only form of transaction where the percentage of unknown addresses may run high."

However Pennsylvania submitted evidence to the Special Master in the form of an examination of all escheatable items concerning Western Union telegraphic money orders in the year 1963 which showed that out of 2,951 escheatable transactions, the sender's address was not given on 1,066, or 36% of the applications. (Of the 1,885 applications where the sender's address was given, the address coincided with the state of origin in 93% of the transactions.) At page six of his report, the Special Master rejected this evidence as "immaterial" and not "in the least helpful in deciding the case," presumably because 1963 was the year following the last year covered by Pennsylvania's Complaint. Similarly, though the Special Master agreed ". . . to consider American Express travelers cheques and any other similar instruments, inasofar as the disposition of unclaimed funds from such transactions shed light on a proper disposition of unclaimed funds arising from Western Union telegraphic money orders" (Report, p. 4), his Report contained no reference to the brief and statement filed *amicus curiae* by American Express (and accepted by the Special Master), which indicates that with respect to their commercial money orders American Express neither retains nor requires a record concerning the purchaser or payee (*Statement,* p. 4; Brief, p. 7), and with

respect to their countless travelers cheque transactions, American Express retains records of the purchasers' addresses (if given) for the "relatively short period of time" necessary to protect the issuer and purchaser should the latter report his cheques missing or stolen. The practice with respect to "over-the-counter" money orders cited above was stipulated to by all the parties (*Stipulation,* p. 27, footnote 10; p. 19, footnote 17), but was not raised or discussed by the Special Master in his report. (It is relevant to note, in assessing the degree of windfall gained by the State of New York under the decree proposed by the Special Master and presently adopted by the Court that American Express, by far the interstate issuer of commercial money orders and travelers cheques, is incorporated in that State. Petitioner is advised by counsel for American Express that as of January 1, 1972, that Company holds $2,221,200.00, representing the proceeds of travelers cheques alone which have been unclaimed for a period of 15 years. As American Express' 1971 Annual Report indicates that it had one billion dollars in travelers cheques, money orders and drafts outstanding as of that date, with a growth in this figure of over 75% since 1964, the parameters of this windfall, and the corresponding loss of income to the other States and their citizens, are considerable.) Thus it is submitted that the Special Master's seventh finding of fact (on which the above quoted statement from the Court's Majority opinion was presumably based) which says in part that "Nowhere in the pleadings or in the Stipulation is there any more specific statement of how frequently this omission (to fill in the sender's address) occurs" was misleading and was not indicative of the evidence offered either with

respect to Western Union or the other types of commercial instruments issued by that company and others which bear on the consideration expressed by the Court.

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2. The Survey Contemplated by the Majority Opinion Will Authoritatively Provide the Required Information

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The 1963 survey mentioned above was objected to by New York on narrow grounds of authentication and relevancy. Pennsylvania believed those objections to be groundless given the matters already stipulated to by the parties which were the result of similar investigations, and the obviously prospective and broad effect of any Court decision in the exercise of its quasi-legislative rule-making capacity in this area of litigation between the States. However, the survey to be undertaken by Western Union (or independent auditors) in executing the proposed decree of the Special Master, presently adopted by the Court, will clearly remove any such objections by either New York or the Special Master since it will concern exclusively the transactions involved in this litigation. At the same time, this survey will answer the questions raised both by the Special Master and the Court's majority as to the percentage of instances where addresses are not available.

At the initial meeting of the parties, called by the Special Master on November 13, 1970, it was proposed by the State of New York that such a survey be undertaken by Western Union. This was objected to by Western Union because of the costs involved, which might prove to be unnecessary either in whole or part depending

on the Rule adopted by the Court. (*Memorandum of Joseph H. Resnick, Esq.*, pp. 3-4; see also *Stipulation*, §32, pp. 16-17). As it now appears that the results of such a survey would be pertinent to the Court's application of its rule-making power, it is submitted that the interests of justice require that the Court withhold final adoption of a decree until its completion. This is particularly so given considerations of equity and fairness, the quasi-legislative role of the Court in this case (*Minority Opinion*, pp. 1-2), and the Majority's acknowledgment that the present result is inconsistent with ". . . our refusal in *Texas* to make the debtor's domicile the primary recipient of unclaimed intangibles." (*Majority Opinion*, p. 8.)

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3. Pennsylvania Has Suggested a Distinction Which Differentiates the Present Case from Texas v. New Jersey While Limiting the Possible Categories of Facts

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At page 8 of its opinion the Majority cites *Texas v. New Jersey*, 379 U.S. 674 (1965), for the proposition that the Court should avoid adoption of a rule which would require consideration of each escheat case on its particular facts ". . . or to devise new rules of law to apply to ever developing new categories of facts." 379 U.S. at 679. This proposition had been made by Mr. Justice Black within the context of the "contacts" rule proposed in that case by Texas which would have required a court to "examine the circumstances surrounding each particular item of escheatable property on its own peculiar facts and then try to make a difficult, often quite subjective decision as to which State's claim to

those pennies or dollars seems stronger than another's." However, the factual range of the rule proposed by Pennsylvania was limited. As suggested by the Minority at page 6 of its opinion, "The debtor either will or will not maintain creditors' addresses in the ordinary course of business." Further, Pennsylvania raised both in its Reply Brief to the Court, and at oral argument, two distinct and self-limiting categories of transactions from which escheatable obligations arise—those incurred by an enterprise in exchange for services rendered, and those incurred as part of the business for which it is organized. The former comprehended the eight classes of debt involved in the *Texas* case—including those four where there were a limited number of creditors who had no last addresses indicated, while the latter comprehends the money order business, where the recording or retention of such addresses is not required by commercial necessity. This distinction was not challenged at oral argument and is urged again upon the Court as a basis for resolving this case in a manner which is consistent with commercial convenience and the considerations of equity and fairness which encouraged such a favorable reception among the States to the Rule of *Texas v. New Jersey.* The consistency of the Rule proposed by Pennsylvania and the other States—save New York—with that adopted by the Court in *Texas v. New Jersey,* and the corresponding distinction between the categories of transactions involved in the two cases is best demonstrated by the fact that application of the Pennsylvania rule to the intangible obligations in the earlier case would not have resulted in any change in their eventual allocation among the States.

4. The Court's Position on the Constitutional Considerations Raised by the Special Master Should Be Clarified

As pointed out by the Majority at page 6 of its Opinion, the Special Master expressed strong reservations regarding the constitutionality under *Pennoyer v. Neff,* 95 U.S. 714 of any presumption which equated creditor's residence for purposes of *Texas v. New Jersey* with the state of purchase of an intangible obligation. All parties seemed to agree that the considerations of *Pennoyer* and its progeny had been removed with respect to the States' power to escheat intangible obligations—certainly with respect to their ability to take custodially—by the succeeding line of cases in this field. *Security Savings Bank v. California,* 263 U.S. 282 (1923); *Anderson National Bank v. Luckett,* 321 U.S. 233 (1943); *Connecticut Insurance Co. v. Moore,* 333 U.S. 541 (1947); *Mullane v. Central Hanover Bank,* 339 U.S. 306 (1949); *Standard Oil Co. v. New Jersey,* 341 U.S. 428 (1951). Furthermore in the *Texas* case, the Court specifically agreed with the then Master that its concern was not "with the technical domicile of the creditor, . . ." but with considerations of equity and ease of administration. 379 U.S. 674, 681 n. 11, 683. Petitioner is concerned that adoption of the Decree proposal by the Special Master without specific resolution of the reservations raised with respect to the constitutionality of the place of purchase test will encourage holders of escheatable funds to withhold them from States which have adopted the Revised Uniform Disposition of Unclaimed Property Act or similar legislation, even where the state of corporate domicile does not have appropriate legislation, and thus foster future litigation.

5. The Ability of the States To Apply Remedial Legislation Should Be Briefed

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The Majority opinion rests at least in part on the assumption that the States separately, can draft and enforce remedial legislation which will at least prospectively remove any inequity resulting from its decision. It is submitted that this assumption may not be totally correct given the commercial economics involved and the relatively small sums of unclaimed funds in relation to the total volume of relevant transactions. If this conclusion formed a substantial part of the majority's reason for dismissing the Exceptions, it is respectfully requested that reargument be allowed on this point.

Conclusion

For the reasons set forth above, as well as those contained in its Exceptions to the Report filed by the Special Master, and its Reply to the Brief filed by the State of New York in support thereof, petitioner prays that this Court grant rehearing of the order dismissing Exceptions and either grant reargument or remand to the Special Master for proceedings as indicated. If indicated, on Rehearing, petitioner shall ask leave to join American Express as party defendant so that any objection to the presentation of evidence regarding the great majority of

transactions where no record of a creditor's address is returned can be removed.

Respectfully submitted,
HERMANN ROSENBERGER, II
Assistant Attorney General
DANTE MATTIONI
Deputy Attorney General for Eastern Pennsylvania
J. SHANE CREAMER
Attorney General of the Commonwealth of Pennsylvania
Counsel for Petitioner

MICHAEL EDELMAN
Of Counsel

CERTIFICATE OF COUNSEL

As counsel for the petitioner, I hereby certify that this petition for rehearing is presented in good faith and not for delay.

HERMANN ROSENBERGER, II
Counsel for Petitioners.

EXHIBIT "A"

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE ATTORNEY GENERAL
404 Pennsylvania Building
Philadelphia, Pa. 19102

November 13, 1970

RE: COMMONWEALTH OF PENNSYLVANIA vs. STATE OF NEW YORK, ET AL., UNITED STATES SUPREME COURT—OCTOBER TERM, 1969, NO. 40 ORIGINAL.

MEMORANDUM OF MEETING

In accordance with the directive by Honorable John F. Davis, the Master appointed by the United States Supreme Court in the above entitled matter, a conference was held in the East Conference Room of the United States Supreme Court on Thursday, November 12, 1970 at 11:00 A.M.

Present were the Honorable John F. Davis, Master, and the representatives of the following states:

NEW YORK—Samuel A. Hirshowitz, First Assistant Attorney General and Julius Greenfield, Assistant Attorney General, Theo. Spitz, Esq., John J. Mullens.

FLORIDA—Winifred L. Wentworth, Assistant Attorney General.

CONNECTICUT—F. Michael Ahern, Assistant Attorney General.

VIRGINIA—Lee F. Davis, Jr., Assistant Attorney General.

OREGON—Philip J. Engelgaw, Assistant Attorney General.

INDIANA—

PENNSYLVANIA—Joseph H. Resnick, Assistant Attorney General, and Michael Edelman, Esquire, Escheator.

also:

WESTERN UNION—Peter Oakes, Esquire.

AMERICAN EXPRESS—Francis Ellis, Esquire.

The Master stated that he did not have any stenographer present but would make an order for each state to pay $200.00 towards the expenses of the Master, including a stenographer. He did not feel that it should include Western Union since they were a stake-holder in the case, although they were one of the defendants. New York protested the exclusion of Western Union from the $200.-00 assessment and the Master stated he would make up his mind on that score when he issued the order.

The Master made an inquiry concerning any other states who were interested and Mr. Resnick informed him that in answer to the service of Pennsylvania's Complaint and Brief to all fifty states that he heard from approximately twenty-three states who were interested in possible intervention in the case. The Master stated that he was disposed to permit any state that wished to intervene to do so and asked all the defendants wether they had any objections. There were no objections on the part of any of the Defendants and the Master advised them to so inform the Clerk of the United States Supreme Court so that there would be no delay in allowing the states that wished to do so to intervene.

He also asked Mr. Resnick, of Pennsylvania, since he had been corresponding with those states, to advise them of his action.

Thereupon ensued a discussion between all the parties as to the format and presentation of the issues before the Master. The Master was of the opinion that the Supreme Court would give a declaratory judgment in the case as it did in the Texas vs. New Jersey case and what we wanted, therefore, would be evidence or a stipulation as to the facts that would establish the state or states as to Western Union's liability for the escheat money which they held as stake-holder.

New York was of the opinion that Western Union should furnish the Master and the parties with a detailed survey of all the escheat money that they held in their possession as to which amount was allocated to the state of origin, the state of destination and the various subdivisions of those two categories as to drafts received and not paid, drafts for money orders cancelled, drafts not issued, etc. Western Union protested that such a survey would cost between $175,000 and $200,000 and thought that the Supreme Court should issue its judgment first as to whom the escheat money should be paid. For example, if the Supreme Court held that it should go to the state of incorporation then they would not have to make such a survey, or if it was decided that the escheat money went to the state of origin they would not have to make such a detailed survey.

Pennsylvania and the Master both agreed with Western Union and the Master stated for the present that was the way he felt unless he could be persuaded to the contrary by New York. He ordered Western Union to provide him and the various states with a copy of the survey

and stipulation that they made in the earlier cases of Pennsylvania vs. Western Union which was decided by the United States Supreme Court in 1962.

The discussion then centered on the role of the American Express Company in the instant case, since they expressed an opinion that travelers checks escheat money (which they held as stake-holder) would be affected by the decision in this case. The Master was of the opinion that he could not include American Express travelers checks in the case unless they were made a party defendant to the action by Pennsylvania, since only the question of money orders was in front of him and the Court. He suggested that possibly American Express could enter as a friend of the court and explain their position, which might have a bearing on the Supreme Court's decision. He directed counsel for American Express to prepare a statement of the facts showing the modus operandi of the American Express travelers checks for submission to the Master and the various states, from which it can be determined whether or not travelers checks should be included in the case.

The Master then ordered Pennsylvania and New York to confer with Western Union concerning the preparation of a stipulation based on their survey above mentioned and report back to him. The parties arranged to meet in New York on January 5, 1971 for that purpose.

The Master hoped that the case could be concluded within the present term of the Court, but the parties were doubtful whether this could be accomplished based on the experience of the Texas vs. New Jersey case and the possible intervention of many of the other states.

The meeting thereupon was adjourned.

EXHIBIT "B"

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF JUSTICE
Philadelphia Office

[Copy]

November 18, 1970

Honorable John F. Davis
4704 River Road
Washington, D.C. 20016

RE: PENNSYLVANIA vs. STATE OF NEW YORK, ET AL.
UNITED STATES SUPREME COURT
OCTOBER TERM 1969
NO. 40 ORIGINAL

Dear Mr. Davis:

I am enclosing herewith a sample letter and list of states I contacted concerning your request to notify them in the event they wished to intervene.

I am also enclosing a copy of notes of the November 12th meeting which I had made for my own records. If I left anything out that was essential or needs correction, I would appreciate hearing from you.

Sincerely yours,

Joseph H. Resnick
Assistant Attorney General
404 Pennsylvania Building
1500 Chestnut Street
Philadelphia, Pa. 19102

JHR:mg
encs.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1969
No. 40 Original

Commonwealth of Pennsylvania et al.,
Petitioner

vs.

State of New York et al.

PROOF OF SERVICE

I, Hermann Rosenberger, II, Assistant Attorney General of the Commonwealth of Pennsylvania, hereby certify that I am one of the attorneys for the Plaintiff, COMMONWEALTH OF PENNSYLVANIA, that I am a member of the Bar of the Supreme Court of the United States, and that on the 12 day of July, 1972, I served copies of the foregoing Petition for Rehearing on each of the parties by depositing such copies, postage prepaid, in a United States Post Office addressed as follows:

Robert A. Zaban
Assistant Attorney General
Room 219, State House
Indianapolis, Indiana 46204

Hon. Louis J. Lefkowitz
Attorney General
State Capitol
Albany, New York 12224

Hon. Robert L. Sheirn
Attorney General
State Capitol
Talahassee, Florida 32304

Hon. Lee Johnson
Attorney General
100 State Office Bldg.
Salem, Oregon 97310

Hon. Andrew P. Miller
Attorney General
Supreme Court Library Bldg.
Richmond, Virginia 23219

Hon. Robert K. Killian
Attorney General
Capitol Annex, 30 Kennedy Street
Hartford, Connecticut 06115

G. A. Strader, Esquire
Deputy Attorney General
500 Wells Fargo Bank Building
Sacramento, California 95814

Hon. Gary K. Nelson
Attorney General
159 State Capital Bldg.
Phoenix, Arizona 85007

Herbert Felsen, Esquire
Western Union Telegraph Company
60 Hudson St.
New York, New York 10013

Francis M. Ellis, Esquire
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2 Wall Street
New York, New York 10005

John F. Davis
Special Master
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Washington, D. C. 20016

Michael Edelman, Esquire
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New York, New York 10013

Lee F. Davis, Esquire
Assistant Attorney General
P. O. Box 61
Richmond, Virginia 23215

Mrs. Winifred Wentworth, Esquire
Assistant Attorney General
State Capitol
Talahassee, Florida 32301

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Assistant Attorney General
State Capitol Bldg.
Phoenix, Arizona 85007

Hermann Rosenberger, II
Assistant Attorney General, Commonwealth of Pennsylvania

Dante Mattioni
Deputy Attorney General for Eastern Pennsylvania

J. Shane Creamer
Attorney General, Commonwealth of Pennsylvania

Supreme Court, U. S.
F I L E D
JUL 14 1972
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

and

STATE OF CONNECTICUT,

Intervenor-Plaintiff,

vs.

STATE OF NEW YORK, ET AL,

Defendants.

PETITION FOR RE-HEARING

ROBERT L. SHEVIN
ATTORNEY GENERAL OF FLORIDA

Winifred L. Wentworth
Assistant Attorney General

Attorneys for Defendant
State of Florida

Capitol Building
Tallahassee, Florida 32304

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

and

STATE OF CONNECTICUT,

Intervenor-Plaintiff,

vs.

STATE OF NEW YORK, ET AL,

Defendants.

PETITION FOR RE-HEARING

ROBERT L. SHEVIN
ATTORNEY GENERAL OF FLORIDA

Winifred L. Wentworth
Assistant Attorney General

Attorneys for Defendant
State of Florida

Capitol Building
Tallahassee, Florida 32304

The Defendant State of Florida presents this Petition for Re-Hearing of the above titled cause and respectfully shows:

GROUNDS FOR RE-HEARING

I

In its opinion in this cause the Court entered the decree recommended by the Special Master as to the disposition of unclaimed Western Union money order funds which several states sought to escheat, in affirmation of the allocation formula adopted in Texas v. New Jersey, 379 U.S. 674 (1965). The funds accordingly escheat to the state of the creditor's address as appearing in Western Union records. If no address appears in such records, then the right to escheat would belong to the domiciliary state of the debtor, Western Union. Pennsylvania v. New York, _____ U.S. _____, No. 40 Orig. at 7, (June 19, 1972).

For the purposes of this petition, the Defendant State of Florida accepts the Court's confirmation of the Special Master's conclusion that the funds in question may be escheated by the state "in which the records of Western Union placed the address of the creditor." Id. at 7; Report of the Special Master at 20-21. Petitioner also accepts the determination that the money order application forms constitute records from which these addresses may be obtained. Pennsylvania v. New York, supra, at 9.

Petitioner urges, however, that in every instance in which such records reflect an applicant's failure to supply an address different from that of the issuing office, then the address of the Western Union office at which the creditor would be entitled to a refund or payment constitutes an "adequate" record of the creditor's address for purposes of this proceeding. The Court recognized that a residence address is not always available and recommended that in the future the states require Western Union to keep adequate address records. Id. at 9. The petitioner urges, however, that the failure to record the residence addresses of creditors was not due to the fact that Western Union did not attempt to obtain this information. The money order application forms presently require the creditor's address to be listed. Stipulation of Facts, p. 5-6, Para. II, subpara. 7. It is clear from the face of such forms, Exhibit 2 of the stipulated record, that in every instance the failure to obtain records of other creditor addresses results from an omission by the purchaser to complete the last line designated "sender's address." State legislation requiring Western Union to keep "adequate records" would therefore appear to be an impractical or impossible remedy for this problem.

For this reason, petitioner urges that a state's right to escheat should not be conditioned upon the existence of creditors' residence addresses in the debtor's records. Instead it is suggested that the record of the place of refund or payment, which is always obtainable from

Western Union's records, should in the absence of conflicting records constitute the business address of the creditor for the purpose of determining which state shall have the right of escheat. This conclusion would accord with the expressed intent of the Court in Texas, supra, quoted repeatedly in the briefs in this cause, that the rule based on a debtor's record of a creditor's address was not meant to incorporate legal residence or domicile concepts. 379 U.S. 674, 601, Note 11.

II

The Court's present policy of allowing the funds in controversy from unclaimed money orders to escheat to the debtor domiciliary state results in the inequity of proceeds from many separate small transactions flowing to the state where a debtor has chosen to incorporate, in conflict with the principle by which a debt is treated as property of the creditor and not the debtor. This procedure was expressly rejected by the Court in Texas v. New Jersey, supra, as a means of disposing of such unclaimed funds. The Court stated that:

> [I]t seems to us that in deciding a question which should be determined primarily on the principles of fairness, it would too greatly exalt a minor factor to permit escheat of obligations incurred all over the country by the state in which the debtor happened to incorporate itself. Id. at 680.

If all of the unclaimed funds from those money order forms which do not list the residence address of the creditor are escheated to the debtor domiciliary state, the standard which was rejected by the Court in Texas v. New Jersey, supra, may in effect be applied in the case sub judice. Unlike the Texas case, where only small portions of the obligations had no creditor's address on the debtor's records, in this case the greater share will apparently continue in the future to go to the domiciliary state since, as argued in Point I, supra, state legislation cannot as a practical matter prevent the sender from failing to list his residence address. By looking to the address of the creditor the Court in Texas recognized that the debts were assets of creditors and attempted to distribute them proportionately to the number of creditors in each state. Id. at 681. The equitable principles of this policy will be defeated by allowing the debtor domiciliary state to escheat all funds for which there is no address declared by the creditor, other than the location at which he is entitled to refund or payment.

Considering the address of those creditors who did not list a residence address on the money order form to be the state in which the Western Union office for refund or payment is located

will more equitably allocate the funds. This distribution would be accurate as well as equitable. In fact, if the Court has considered the evidence proffered to the Special Master concerning Western Union's 1963 transactions (Report of the Special Master, p. 5-6), this material will show that less than two percent of the money order purchase forms list an address in a state different from the state in which the transactions occurred. It is urged, therefore, that the address of the Western Union office in which the creditor purchased his money order, and at which refund is payable, be considered in the business address of the creditor when no other address is listed on the purchase form.

CONCLUSION

The State of Florida accepts the Court's decision to allow unclaimed funds to escheat to the state which is shown in Western Union's records as the address of the creditor. For the reasons stated herein, however, it is urged that when no other address is shown by such records, the address of the office where the funds are refundable constitutes the address of the creditor as shown by the

debtor's records. This disposition would fully accord with the reasoning and result of Texas v. New Jersey, supra.

Respectfully submitted,

ROBERT L. SHEVIN
ATTORNEY GENERAL

WINIFRED L. WENTWORTH
Assistant Attorney General

The Capitol
Tallahassee, Florida 32304

Attorneys for Defendant
State of Florida

PROOF OF SERVICE

I, Winifred L. Wentworth, Assistant Attorney General of the State of Florida, hereby certify that I am one of the attorneys for the defendants, State of Florida, that I am a member of the Bar of the Supreme Court of the United States, and that on the 13th day of July, 1972, I served copies of the foregoing Petition for Re-Hearing on each of the parties by depositing such copies in a United States Post Office, addressed as follows:

E. Robert Seaver, Esq.
Clerk, United States Supreme Court
Washington, D. C.

Joseph H. Resnick, Esq.
Assistant Attorney General
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Michael Edelman, Esq.
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Samuel Hirshowitz, Esq.
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Hon. Gary K. Nelson
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State of Arizona
159 State Capitol Building
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Att: Leonard M. Bell, Esq.

William F. Thompson, Esq.
Assistant Attorney General of the
State of Indiana
219 State House
Indianapolis, Indiana 46204

ROBERT L. SHEVIN
ATTORNEY GENERAL



Winifred L. Wentworth
Assistant Attorney General

The Capitol
Tallahassee, Florida 32304

DEC 27 1972

MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

and

STATES OF CONNECTICUT, CALIFORNIA, and INDIANA,

Intervening Plaintiffs,

v.

STATES OF NEW YORK, FLORIDA, OREGON and VIRGINIA, and the WESTERN UNION TELEGRAPH COMPANY,

Defendants,

and the

STATE OF ARIZONA,

Intervening Defendant.

SUPPLEMENTAL REPORT OF JOHN F. DAVIS, SPECIAL MASTER

December, 1972

Washington, D.C. • THIEL PRESS • (202) 393-0625

IN THE

SUPREME COURT OF THE UNITED STATES

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

and

STATES OF CONNECTICUT, CALIFORNIA, and INDIANA,

Intervening Plaintiffs,

v.

STATES OF NEW YORK, FLORIDA, OREGON and VIRGINIA, and the WESTERN UNION TELEGRAPH COMPANY,

Defendants,

and the

STATE OF ARIZONA,

Intervening Defendant.

SUPPLEMENTAL REPORT OF JOHN F. DAVIS, SPECIAL MASTER

To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

On June 19, 1972, the Supreme Court handed down an opinion in this case adopting a formula for determining which States are entitled to escheat unclaimed funds in the possession of Western Union Telegraph Company as the result of aborted telegraphic money orders. In the concluding paragraph of that opinion it was stated: "We think that as a matter of fairness the claimant States, and not Western Union, should bear the cost of finding and recording the available addresses, and we shall remand to the Special Master for a hearing and recommendation as to the appropriate formula for distributing those costs. * * *"

On June 27, 1972, the Special Master notified counsel for all of the parties that he would hold a hearing for the submission of evidence and oral argument on the subject of the remand if any party so desired. In the absence of such a request, he would consider the views of the parties on written submission, memoranda to be filed on or before August 1 with replies to be filed on or before August 15. Before this procedure could be carried out Florida and Pennslyvania filed petitions for rehearing with the Court. Thereupon, the Special Master informed the parties that he was of the opinion that it would be inappropriate to proceed while the petitions were pending. On October 10, 1972, the Supreme Court denied the petitions for rehearing. On October 12 the Special Master rescheduled the dates for memoranda and replies for November 15 and December 1, 1972.

No party has requested a formal hearing. Western Union, Indiana, New York, Oregon and Pennsylvania have filed memoranda.

The parties who have communicated their views to the Special Master agree that the search of the records should

be conducted by Western Union and that the resulting tabulation[1] should list not only the items as to which there are no addresses or in which the addresses place the creditors in the States which are parties to this proceeding, but should also list items showing addresses in all of the States. Since such a tabulation would provide a basis for the recovery by escheat, or custodial taking, by States not parties to this proceeding, the question is whether such States should share in the cost of the search. All of the parties who have been heard from agree that any State benefited by the search should share proportionally in its cost. It has also been proposed that the costs of these proceedings should also be so apportioned. The Special Master agrees that it is equitable that all States sharing in the benefits of the search should pay their share of the cost, but it does not seem appropriate that court costs in a proceeding should be assessed against States which are not parties. The Special Master therefore recommends a supplemental decree providing for a division of the cost of the search proportionate to the amounts of their recovery from the fund by all States, but that the costs of these proceedings, including the costs heretofore allowed and any costs hereafter allowed for the remand, should be

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[1] Western Union has suggested that a material saving can be effected by not attempting to search out addresses for items of $3.00 or less, but by merely totalling them and dividing the total in the same proportion as the larger items are divided. The parties generally agree on this procedure, but New York questions the use of $3.00 as the cut-off figure. This seems to be a detail of the audit on which the Court should not be called to make a decision. If the parties can agree on such a procedure, the Special Master does not believe the proposed supplemental decree would prevent its being used.

divided pro rata only among the States which are parties to the case.

The Commonwealth of Pennsylvania has suggested that the search include not only the period covered by its complaint, that is through December 31, 1962, but also through December 31, 1965, since the use of that date would permit accounting for all full calendar years completed seven years before the audit. The Special Master does not believe that the Court should make an order covering periods not specified in the pleadings. However, if Pennsylvania should ask leave to amend its complaint to cover the additional three years, and if the other parties to the proceeding express no objection to such an amendment, the Special Master recommends that the Court accept the amendment and that its order then be deemed to cover the entire period.

In addition to the above matters, Western Union has made suggestions as to the methods it would use in making the search and as to its application of the Court's opinion to various factual situations. The States have disagreed as to some of these details, such, for example, as to whether a street address of a sender without identification of a city or State can be accepted without verification as fixing the sender's address in the State where the money order originated. The Special Master does not believe that it is appropriate for the Court to resolve this and other questions of interpretation in advance of the search. Hopefully, it will never be called on to do so since such questions can be resolved by agreement between the parties, or by submission of such details to an independent referee or arbitrator, or, if necessary, by the decision of the state courts in regular escheat proceedings. If irreconcilable conflicts do

develop, it will then be the appropriate time to ask the Court to decide such questions.[2]

CONCLUSION

The Special Master recommends the entry of the following supplemental decree:

RECOMMENDED SUPPLEMENTAL DECREE

Supplementing the Court's decree of June 29, 1972, it is further Ordered, Adjudged and Decreed as follows:

The reasonable cost of a search by Western Union of its records for the addresses of creditors in connection with aborted telegraphic money orders shall be deducted from the unclaimed fund in Western Union's possession and the amount payable to any State as a result of escheat or custodial taking of any part of the fund shall be reduced by a percentage of such cost equal to the percentage that that State's share of the fund bears to the total of the fund. As to the States who are parties to this proceeding, the amount of the fund which each may recover by escheat or custodial taking shall be further reduced by a share of the costs of this proceeding, including both the costs approved by the Court's order of June 26, 1972, and any costs for this supplemental

---

[2]Pennsylvania appears to assume that this proceeding will be continued to a final order by this Court apportioning the fund among the States. The Special Master does not believe that this original action should be utilized as a substitute for the regular escheat procedures under the individual State statutes. Rather it should be treated as a declaratory judgment action to reconcile the conflicting claims of the various States leaving the claims to the established escheat procedures from there on.

proceeding hereafter approved by the Court, proportionate to the total amount of the recovery of those States from the fund.

Respectfully submitted,

JOHN F. DAVIS
Special Master

December, 1972

PENNSYLVANIA *v.* NEW YORK ET AL.

ON BILL OF COMPLAINT

No. 40, Orig. Argued March 29, 1972—Decided June 19, 1972

Pennsylvania brought this original action against New York to determine the authority of States to escheat, or take custody of, unclaimed funds paid to Western Union Telegraph Co. for purchase of money orders. The Special Master, following *Texas* v. *New Jersey*, 379 U. S. 674, recommended that any sum held by Western Union unclaimed for the time period prescribed by state statute may be escheated or taken into custody by the State in which the company's records placed the creditor's address, whether the creditor be the payee of an unpaid draft, the sender of a money order entitled to a refund, or an individual whose claim has been erroneously underpaid; and where the records show no address, or where the State in which the creditor's address falls has no applicable escheat law, the right to escheat or take custody shall be in the debtor's domiciliary State, here New York. The recommended decree is adopted and entered, and the cause is remanded to the Special Master for a proposed supplemental decree with respect to the distribution of the costs to the States of the inquiry as to available addresses. Pp. 208–216.

BRENNAN, J., delivered the opinion of the Court, in which BURGER, C. J., and DOUGLAS, STEWART, WHITE, and MARSHALL, JJ., joined. POWELL, J., filed a dissenting opinion, in which BLACKMUN and REHNQUIST, JJ., joined, *post*, p. 216.

Herman Rosenberger II, Assistant Attorney General of Pennsylvania, argued on the exceptions to the Report of the Special Master for plaintiff. On the brief were *J. Shane Creamer*, Attorney General, and *Joseph H. Resnick*, Assistant Atorney General.

F. Michael Ahern, Assistant Attorney General, argued on the exceptions to the Report of the Special Master for intervenor-plaintiff the State of Connecticut. With him on the brief was *Robert K. Killian*, Attorney General. *Theodore L. Sendak*, Attorney General, and *Rob-*

ert A. Zaban, Deputy Attorney General, filed a brief on exceptions to the Report of the Special Master for intervenor-plaintiff the State of Indiana.

Winifred L. Wentworth, Assistant Attorney General, argued on the exceptions to the Report of the Special Master for defendant the State of Florida. With her on the brief was *Robert L. Shevin,* Attorney General. *Julius Greenfield,* Assistant Attorney General, argued in support of the Report of the Special Master for defendant the State of New York. With him on the brief were *Louis J. Lefkowitz,* Attorney General, *Samuel A. Hirshowitz,* First Assistant Attorney General, and *Gustave Harrow,* Assistant Attorney General. *Lee Johnson,* Attorney General, *John W. Osburn,* Solicitor General, and *Philip J. Engelgau,* Assistant Attorney General, filed a brief on exceptions to the Report of the Special Master for defendant the State of Oregon.

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Pennsylvania and other States except to, and New York supports,[1] the Report of the Special Master filed in this original action brought by Pennsylvania against New York for a determination respecting the authority of the several States to escheat, or take custody of, unclaimed funds paid to the Western Union Telegraph Company for the purchase of money orders.[2] We over-

[1] Of the remaining States party to this case, Florida has filed exceptions as defendant, and Connecticut and Indiana as intervening plaintiffs. New Jersey has filed a brief *amicus curiae* in support of Pennsylvania's position.

[2] We granted leave to file the bill of complaint, 398 U. S. 956, permitted the State of Connecticut to intervene as a party plaintiff, and appointed Mr. John F. Davis as a Special Master to take evidence and make appropriate reports. 400 U. S. 811. Thereafter, California and Indiana were permitted to intervene as plaintiffs, and Arizona as a defendant. 400 U. S. 924, 1019; 401 U. S. 931.

rule the exceptions and enter the decree recommended by the Special Master, see *post*, p. 223.[3]

The nature of Western Union's money order business, and the source of the funds here in dispute, were described by the Court in *Western Union Telegraph Co.* v. *Pennsylvania*, 368 U. S. 71 (1961):

> "Western Union is a corporation chartered under New York law with its principal place of business in that State. It also does business and has offices in all the other States except Alaska and Hawaii, [as well as] in the District of Columbia, and in foreign countries, and was from 1916 to 1934 subject to regulation by the I. C. C. and since then by the F. C. C. In addition to sending telegraphic messages throughout its world-wide system, it carries on a telegraphic money order business which commonly works like this. A sender goes to a Western Union office, fills out an application and gives it to the company clerk who waits on him together with the money to be sent and the charges for sending it. A receipt is given the sender and a telegraph message is transmitted to the company's office nearest to the payee directing that office to pay the money order to the payee. The payee is then notified and upon properly identifying himself is given a negotiable draft, which he can either endorse and cash at once or keep for use in the future. If the payee cannot be located for delivery of the notice, or fails to call for the draft within 72 hours, the office of destination notifies the sending office. This office then notifies the original sender of the failure to deliver and makes a refund, as it

[3] The exception of Indiana as to a typographical error in the recommended decree is sustained. The phrase "escheat of custodial taking" in paragraph 2, lines 4–5 of the decree should read "escheat or custodial taking."

makes payments to payees, by way of a negotiable draft which may be either cashed immediately or kept for use in the future.

"In the thousands of money order transactions carried on by the company, it sometimes happens that it can neither make payment to the payee nor make a refund to the sender. Similarly payees and senders who accept drafts as payment or refund sometimes fail to cash them. For this reason large sums of money due from Western Union for undelivered money orders and unpaid drafts accumulate over the years in the company's offices and bank accounts throughout the country." *Id.*, at 72–73.

In 1953 Pennsylvania began state proceedings under its escheat statute [4] to take custody of those unclaimed funds, held by Western Union, that arose from money order purchases in the company's Pennsylvania offices. The Supreme Court of Pennsylvania affirmed a judgment for the State of about $40,000, *Commonwealth* v. *Western Union*, 400 Pa. 337, 162 A. 2d 617 (1960), but this Court reversed, *Western Union* v. *Pennsylvania*, *supra*, holding that the state court judgment denied Western Union due process of law because it could not protect the company against rival claims of other States. We noted that controversies among different States over their right

[4] The Pennsylvania statute, Act of July 29, 1953, Pub. L. 986, § I, (Pa. Stat. Ann., Tit. 27, § 333) provides in part:

"(b) Whensoever the . . . person entitled to any . . . personal property within or subject to the control of the Commonwealth or the whereabouts of such . . . person entitled has been or shall be and remain unknown for the period of seven successive years, such . . . personal property . . . shall escheat to the Commonwealth . . . .

"(c) Whensoever any . . . personal property within or subject to the control of this Commonwealth has been or shall be and remain unclaimed for the period of seven successive years, such . . . personal property . . . shall escheat to the Commonwealth . . . ."

to escheat intangibles could be settled only in a forum "where all the States that want to do so can present their claims for consideration and final, authoritative determination. Our Court has jurisdiction to do that." *Id.*, at 79.

Thereafter, in *Texas* v. *New Jersey*, 379 U. S. 674 (1965), the Court was asked to decide which of several States was entitled to escheat intangible property consisting of debts owed by the Sun Oil Co. and left unclaimed by creditors. Four different rules were proposed. Texas argued that the funds should go to the State having the most significant "contacts" with the debt, as measured by a number of factors; New Jersey, that they should go to the State of the debtor company's incorporation; Pennsylvania, to the State where the company had its principal place of business; and Florida, to the State of the creditor's last known address as shown by the debtor's books and records. We rejected Texas' and Pennsylvania's proposals as being too uncertain and difficult to administer, and rejected New Jersey's because "it would too greatly exalt a minor factor to permit escheat of obligations incurred all over the country by the State in which the debtor happened to incorporate itself." *Id.*, at 680. Florida's proposal, on the other hand, was regarded not only as a "simple and easy" standard to follow, but also as one that tended "to distribute escheats among the States in the proportion of the commercial activities of their residents." *Id.*, at 681. We therefore held that the State of the creditor's last known address is entitled to escheat the property owed him, adding that if his address does not appear on the debtor's books or is in a State that does not provide for escheat of intangibles, then the State of the debtor's incorporation may take custody of the funds "until some other

State comes forward with proof that it has a superior right to escheat." *Id.*, at 682. The opinion concluded:

> "We realize that this case could have been resolved otherwise, for the issue here is not controlled by statutory or constitutional provisions or by past decisions, nor is it entirely one of logic. It is fundamentally a question of ease of administration and of equity. We believe that the rule we adopt is the fairest, is easy to apply, and in the long run will be the most generally acceptable to all the States." *Id.*, at 683.

On March 13, 1970, Pennsylvania filed this original action to renew its efforts to escheat part of Western Union's unclaimed money order proceeds. The complaint alleged that Western Union had accumulated more than $1,500,000 in unclaimed funds "on account of money orders purchased from the company on or before December 31, 1962," and that about $100,000 of that amount, "held by Western Union on account of money orders purchased from it in Pennsylvania," was subject to escheat by that State. Pennsylvania asked for a judgment resolving the conflicting claims of it and the defendant States, and for a temporary injunction against payment of the funds by Western Union or a taking of them by the defendant States, pending disposition of the case.[5]

In their arguments before the Special Master, the parties suggested three different formulas to resolve their conflicting claims. Pennsylvania contended that Western Union's money order records do not identify anyone as a "creditor" of the company and in many instances do

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[5] The Court has taken no action on the plea for temporary injunction, and accepts the recommendation of the Special Master that it now "be denied as unnecessary." Report 3 n. 2.

not list an address for either the sender or payee; therefore, strict application of the *Texas* v. *New Jersey* rule to this type of intangible would result in the escheat of almost all the funds to the State of incorporation, here New York. To avoid this result, Pennsylvania proposed that the State where the money order was purchased be permitted to take the funds. It claimed that the State where the money orders are bought should be presumed to be the State of the sender's residence. Connecticut, California, and Indiana supported this proposal, as did New Jersey as *amicus curiae*.

Florida and Arizona also supported Pennsylvania, but argued that where the payee had received but not cashed the money order, his address, if known, should determine escheat, regardless of the sender's address.

New York argued that *Texas* v. *New Jersey* should be strictly applied, but that it was not retroactive. Thus, as to money orders purchased between 1930 and 1958 (seven years before the *Texas* decision)[6] New York asserted its right as the State of incorporation to all unclaimed funds, regardless of the creditor's address.[7] As for money orders drawn after 1958, New York would apply the *Texas* rule, and take the funds in all cases where the creditor's address did not appear or was located in a State not providing for escheat.

The Special Master has submitted a report recommending that the *Texas* rule "be applied to all the items involved in this case regardless of the date of the trans-

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[6] New York makes no claim with respect to money orders issued before 1930.

[7] Section 1309 of New York's Abandoned Property Law provides for the custodial taking, not escheat, of uncashed money orders, so that "the rights of a holder of a . . . money order to payment . . . shall be in no wise affected, impaired or enlarged by reason of the provisions of this section or by reason of the payment to the state comptroller of abandoned property hereunder." *Ibid.*

actions out of which they arose." Report 21. The Report expresses some doubt about the constitutionality of the suggested alternatives, stating that both the place-of-purchase and place-of-destination rules might permit intangible property rights to be "cut off or adversely affected by state action in an *in rem* proceeding in a forum having no continuing relationship to any of the parties to the proceedings." *Id.*, at 19. These doubts, however, were not the sole basis for the Special Master's recommendation. He found that "[a]s in the case of the obligations in [*Texas* v. *New Jersey*], [the *Texas*] rule presents an easily administered standard preventing multiple claims and giving all parties a fixed rule on which they can rely." *Id.*, at 20. He concluded that:

> "Any sum now held by Western Union unclaimed for the period of time prescribed by the applicable State statutes may be escheated or taken into custody by the State in which the records of Western Union placed the address of the creditor, whether that creditor be the payee of an unpaid draft, the sender of a money order entitled to a refund, or an individual whose claim has been underpaid through error. . . . [I]f no address is contained in the records of Western Union, or if the State in which the address of the creditor falls has no applicable escheat law, then the right to escheat or take custody shall be in the domiciliary State of the debtor, in this case, New York." *Id.*, at 20–21.

The Report also states that New York would bear the burden of establishing "as to all escheatable items the absence from Western Union's records of an address for the creditor." *Id.*, at 16.

Pennsylvania's exceptions argue that where a transaction is of a type that "the obligor does not make entries upon its books and records showing the address of the

obligee," only "the State of origin of the transaction" should be permitted to escheat. Florida and Arizona have abandoned their state-of-destination test, and together with the other participating States save New York, have joined in Pennsylvania's exceptions. Tr. of Oral Arg. 20, 42.

Pennsylvania's proposal has some surface appeal. Because Western Union does not regularly record the addresses of its money order creditors, it is likely that the corporate domicile will receive a much larger share of the unclaimed funds here than in the case of other obligations, like bills for services rendered, where such records are kept as a matter of business practice. In a sense, there is some inconsistency between that result and our refusal in *Texas* to make the debtor's domicile the primary recipient of unclaimed intangibles. Furthermore, the parties say, the *Texas* rule is nothing more than a legal presumption that the creditor's residence is in the State of his last known address. A presumption based on the place of purchase is equally valid, they argue, and should be applied in order to prevent New York from gaining this windfall.

Assuming, without resolving the doubts expressed by the Special Master, that the Pennsylvania rule provides a constitutional basis for escheat, we do not regard the likelihood of a "windfall" for New York as a sufficient reason for carving out this exception to the *Texas* rule. *Texas* v. *New Jersey* was not grounded on the assumption that all creditors' addresses are known. Indeed, as to four of the eight classes of debt involved in that case, the Court expressly found that some of the creditors "had no last address indicated." 379 U. S., at 675–676, n. 4. Thus, the only arguable basis for distinguishing money orders is that they involve a higher percentage of unknown addresses. But we are not told what percentage

is high enough to justify an exception to the *Texas* rule, nor is it entirely clear that money orders constitute the only form of transaction where the percentage of unknown addresses may run high. In other words, to vary the application of the *Texas* rule according to the adequacy of the debtor's records would require this Court to do precisely what we said should be avoided—that is, "to decide each escheat case on the basis of its particular facts or to devise new rules of law to apply to ever-developing new categories of facts." *Texas* v. *New Jersey*, 379 U. S., at 679.

Furthermore, a substantial number of creditors' addresses may in fact be available in this case. Although Western Union has not kept ledger records of addresses, the parties stipulated, and the Special Master found, that money order applications have been retained in the company's records "as far back as 1930 in some instances and are generally available since 1941." Report 9. To the extent that creditor addresses are available from those forms, the "windfall" to New York will, of course, be diminished.

We think that as a matter of fairness the claimant States, and not Western Union, should bear the cost of finding and recording the available addresses, and we shall remand to the Special Master for a hearing and recommendation as to the appropriate formula for distributing those costs. As for future money order transactions, nothing we say here prohibits the States from requiring Western Union to keep adequate address records. The decree recommended by the Special Master is adopted and entered,[8] and the cause is remanded to the

[8] Insofar as the invocation of any provision of the Revised Uniform Disposition of Unclaimed Property Act would be inconsistent with this decree, the decree prevails. See *Board of Education* v. *Swann*, 402 U. S. 43, 45–46 (1971).

Special Master for further proceedings and the filing of a proposed supplemental decree with respect to the distribution of costs of the inquiry as to available addresses.

It is so ordered.

[For decree adopted and entered by the Court, see *post*, p. 223.]

MR. JUSTICE POWELL, with whom MR. JUSTICE BLACKMUN and MR. JUSTICE REHNQUIST join, dissenting.

The majority opinion today purports to apply the rule laid down in *Texas* v. *New Jersey*, 379 U. S. 674 (1965), to a fact situation not contemplated when that case was decided. In applying that rule to these new facts, it seems to me that the Court exalts the rule but derogates the reasons supporting it.

I

Texas v. *New Jersey*, a case decided within the Court's original jurisdiction, is a unique precedent. Disposition of that case necessarily required a departure from the Court's usual mode of decisionmaking. Our role in this country's scheme of government is ordinarily a restricted one, limited in large measure to the resolution of conflicts calling for the interpretation and application either of statutory acts or of provisions of the Federal Constitution. In the performance of this function, an individual Justice's views as to what he might consider "fair" or "equitable" or "expeditious" are largely immaterial. Infrequently, however, we are called on to resolve disputes arising under the original jurisdiction of the Court (Art. III, § 2) in which our judgment is unaided by statutory or constitutional directives.

In approaching such cases, we may find, as did the

Court in *Texas* v. *New Jersey*, that fairness and expeditiousness provide the guideposts for our decision:

> "[T]he issue here is not controlled by statutory or constitutional provisions or by past decisions, nor is it entirely one of logic. It is fundamentally a question of ease of administration and of equity." *Id.*, at 683.

The case before us today requires the application of similar principles, and I agree that Mr. Justice Black's opinion in *Texas* v. *New Jersey* points the way to the most desirable result. In my view, however, the majority's application of that precedent to the facts of this case offends both the "fairness" and "ease of administration" bases of that opinion.

The Court in *Texas* v. *New Jersey* was asked to decide which States could take title to escheatable intangible personal property in the form of debts owed by Sun Oil Co. to a large number of individual creditors. After rejecting several alternatives offered by the parties, the Court adopted the rule proposed by the State of Florida and approved by the Special Master. Under that rule the power to escheat the debts in question, in the first instance, was to be accorded "to the State of the creditor's last known address as shown by the debtor's books and records." *Id.*, at 680–681. In the "infrequent" case in which no record of last address was available or in which the appropriate State's laws did not provide for the escheat of abandoned intangibles, the property was to go to the State of the debtor's corporate domicile. *Id.*, at 682.

This disposition recommended itself to the Court for several reasons. The rule was generally consistent with the common-law maxim *"mobilia sequuntur personam"**

*See *Blodgett* v. *Silberman*, 277 U. S. 1, 9–10 (1928).

under which intangible personal property may be found to follow the domicile of its owner—here the creditor. *Id.*, at 680 n. 10. In looking to the residence of the creditor, the rule adopted by the Court recognized that the Company's unclaimed debts were assets of the individual creditors rather than assets of the debtor. *Id.*, at 681. Also, in distributing the property among the creditors' States, the rule had the advantage of dividing the property in a manner roughly proportionate to the commercial activities of each State's residents. In using the last-known address as the sole indicator of domicile, the rule would be easy to administer and apply. The Court recognized, of course, that this approach might lead to the escheat of property to a State from which the creditor had removed himself in the period since the debt arose. Yet it concluded that these instances would "tend to a large extent to cancel each other out," and would not disrupt the basic fairness and expeditiousness of the result. *Id.*, at 681.

Paradoxically, the mechanistic application of the *Texas* v. *New Jersey* rule to the present case leads ultimately to the defeat of each of the beneficial justifications for that rule. Unlike the records of the numerous debts owed by Sun Oil, Western Union's records may reflect the creditors' addresses for only a relatively small percentage of the transactions. As a consequence, the greater portion of the entire Western Union fund will go to the State of New York—the State of corporate domicile. Effectively then, the obligation of the debtor will be converted into an asset of the debtor's State of domicile to the exclusion of the creditors' States. The Court in *Texas* v. *New Jersey* specifically repudiated this result on the ground that it was inconsistent with "principles of fairness." *Id.*, at 680. It would have "exalt[ed] a minor factor to permit escheat of obligations incurred all over the country by the State in which the debtor happened

to incorporate itself." *Ibid.* The fact that the Court was willing to permit this result in the few cases in which no record of address was available or in which no law of escheat governed, does not diminish the clear view of the Court that this result would be impermissible as a basis for disposing of more than a small minority of the debts. Yet the decision today ignores the Court's unwillingness to "exalt" the largely coincidental domicile of the corporate debtor. It also disregards the Court's clearly expressed intent that the escheatable property be distributed in proportions roughly comparable to the volume of transactions conducted in each State.

Furthermore, the rule today is incompatible with the Court's view in *Texas* v. *New Jersey* that an easily and inexpensively discernible mode of allocation be utilized. The majority's rule will require the examination of every available money order application to determine whether the applicant filled out the address blank for his own address, or in the case of money order drafts received but not cashed, whether the holder's address had been preserved. Western Union estimated in the stipulated statement of facts that such an item-by-item examination could be undertaken at a cost of approximately $175,000. Report of the Special Master 16.

In sum, the invocation of the *Texas* v. *New Jersey* rule in the manner contemplated by the majority will lead to a result that is neither expeditious nor equitable.

II

The reasons underlying *Texas* v. *New Jersey* could best be effectuated by a relatively minor but logical deviation in the manner in which that rule is implemented in this case. Rather than embarking upon a potentially fruitless search for the creditor's last-known address as a rough indicator of domicile, reliance should be placed upon the State where the debtor-creditor relationship was

established. In most cases that State is likely also to be the site of the creditor's domicile. In other words, in the case of money orders sent and then returned to the initiating Western Union office because the sendee failed to claim the money, the State in which the money order was purchased may be presumed to be the State of the purchaser-creditor's domicile. And, where the draft has been received by either the initiating party or by the recipient but not negotiated, the State in which the draft was issued may be assumed to be the State of that creditor's domicile.

This modification is preferable, first, because it preserves the equitable foundation of the *Texas* v. *New Jersey* rule. The State of the corporate debtor's domicile is denied a "windfall"; the fund is divided in a proportion approximating the volume of transactions occurring in each State; and the integrity of the notion that these amounts represent assets of the individual purchasers or recipients of money orders is maintained. Secondly, the relevant information would be more easily obtainable. The place of purchase and the office of destination are reflected in Western Union's ledger books and it would, therefore, be unnecessary to examine the innumerable application forms themselves. Since the ledgers are more readily available, the allocation of the fund would be effected at less expense than would be required by the majority's resolution.

Despite these advantages, the Special Master rejected this alternative. He reasoned that an undetermined number of these transactions must have taken place outside the creditors' State of domicile. Specifically, he cited the cases in which a New Jersey or Connecticut resident might purchase a money order in New York, or cases in which a resident of Virginia or Maryland might make his purchase in the District of Columbia. Report of the Special Master 18. While such cases

certainly exist, they are merely exceptions to a generally reliable rule that money order purchases are likely to have occurred within the State of the purchaser's domicile. That perfection is not achieved is no reason to reject this alternative. The *Texas* v. *New Jersey* Court recognized that absolute fairness was not obtainable and that the most that could be expected was a rule providing a reasonable approximation. *Id.*, at 681 n. 11. Certainly this objection should not be allowed to frustrate the better alternative in favor of one that is less fair and more difficult to administer.

III

The majority opinion intimates, as I think it must, that the ultimate consequence of its decision today is "inconsistent" (*ante*, at 214) with the result in *Texas* v. *New Jersey*. While the opinion appears to recognize that New York will reap the very "windfall" that *Texas* v. *New Jersey* sought to avoid, its refusal to bend in the face of this consequence goes largely unexplained. Apparently, the basis for its decision is the conviction that the Court's prior precedent was designed to settle the question of escheat of intangible personal property "once and for all." *Id.*, at 678. The majority adheres to the existing rule because of some apprehension that flexibility in this case will deprive the Court of a satisfactory test for the resolution of future cases. The opinion anticipates that departure from *Texas* v. *New Jersey* will leave other cases to be decided on an *ad hoc* basis, depending in each case on the "adequacy of the debtor's records." *Ante*, at 215. Although the factual circumstances of future cases cannot be predicted, it is likely that most of such cases can be resolved within the principles of *Texas* v. *New Jersey*. The factual range is limited. The debtor either will or will not maintain creditors' addresses in the ordinary course of business.

In some categories of transactions, such as those involving money orders and traveler's checks, adequate address records may not be available. In the case of ordinary corporate debts, however, it is more likely that records will be available. Moreover, as the majority points out, any State is free to require corporations doing business in that State to maintain records of its creditors' addresses. *Ante,* at 215.

In short, the threat of frequent and complicated cases in this area seems remote. It provides little justification for the majority's Cinderella-like compulsion to accommodate this ill-fitting precedential "slipper." From a result that seems both inflexible and inequitable, I dissent.